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THE WRITINGS

OF

JAMES MADISON

VOLUME VI.

1790–1802

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G. P. Putnam's Sons

December, 1906

THE WRITINGS

OF

JAMES MADISON

COMPRISING HIS PUBLIC PAPERS AND HIS PRIVATE CORRESPONDENCE, INCLUDING NUMEROUS LETTERS AND DOCUMENTS NOW FOR THE FIRST TIME PRINTED

EDITED BY

GAILLARD HUNT

VOLUME VI.

1790–1802

G. P. PUTNAM'S SONS

NEW YORK
27 WEST TWENTY-THIRD STREET

LONDON
24 BEDFORD STREET, STRAND

The Knickerbocker Press

1906

The Knickerbocker Press, New York

UNIV. OF CALIFORNIA

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CHRONOLOGY OF JAMES MADISON.

1790–1802.

1790.	
March–August.	Attending Congress at New York.
Nov. 20.	Arrives at Philadelphia.
1791.	
January–March.	Attending Congress at Philadelphia.
April.	Goes to Princeton.
May.	Goes to New York.
June.	Makes a tour with Jefferson.
July–August.	In New York.
September.	In Virginia.
October 22.	Attends Congress at Philadelphia.
Nov. 21.	Publishes first essay in Freneau's *National Gazette*.
1792.	
January–May.	Attending Congress at Philadelphia.
February.	Breaks with Hamilton.
May 30.	In Orange.
July 21.	Submits draft of farewell address to Washington.
October 10.	Made a citizen of France by the National Assembly.
December.	Attends Congress at Philadelphia.
1793.	
January–March.	Attending Congress at Philadelphia.

April. In Orange.
August. Visits Monroe.
August–September. Publishes Letters of Helvidius in reply to Pacificus.
October 24. Submits last opinion to Washington.
October. In Orange.

1794.

January–June. Attending Congress at Philadelphia.
September 14. Marries Dolly Payne Todd at "Harewood."
December. Attends Congress at Philadelphia.

1795.

January–March. Attending Congress at Philadelphia.
March. Returns to Orange.
December 7. Attends Congress at Philadelphia.

1796.

Attending Congress at Philadelphia.

1797.

January. In Philadelphia.
March 4. Retires to private life.

1798.

In Orange.
December 21. Resolutions of 1798 passed by House of Delegates.

1799.

January 23. Address of the General Assembly to the People of the Commonwealth of Virginia adopted by General Assembly.
December. Attending House of Delegates at Richmond. Report on the Resolutions adopted.

1800.

In Orange.

1801.

February 27. His father dies.
May 2. Assumes office as Secretary of State.
June 15. Instructs Rufus King relative to seizure of American vessels.

July 24. Instructs Rufus King relative to impressment of American seamen.

October 25. Instructs Charles Pinckney relative to affairs with Spain.

December 22. Instructs Rufus King relative to countervailing duty on American goods.

1802.

March 30. Instructs Charles Pinckney concerning reported cession of Louisiana.

May 1. Instructs Robert R. Livingston concerning Louisiana.

May 11. Instructs Charles Pinckney concerning Louisiana.

July 6. } Instructs Robert R. Livingston concerning
October 15. } Louisiana.

November 27. Instructs Charles Pinckney concerning withdrawal of the right of deposit.

THE WRITINGS OF

JAMES MADISON.

SPEECHES IN THE FIRST CONGRESS—SECOND SESSION, 1790 (*Continued*).

MAY 14—DISCRIMINATING TONNAGE DUES.[1]

Mr. MADISON replied to the several arguments against his motion. A gentleman, said he, (Mr. SEDGWICK,) had called it a "measure of passion." He observed that it had neither been dictated by passion, nor supported with passion; he considered it as a cool as well as a proper measure, and believed that the more coolly it was examined, the more proper it would appear. If any thing more were to be done, let it be something that will be effectual.

---

[1] See vol. v., p. 339 and 340, n. Madison's motion introduced this day was:

"That from and after the —— day of —— next the tonnage on all such vessels be raised to ——; and from and after the —— day of —— next no such vessel shall be permitted to export from the United States any unmanufactured article being the growth and produce thereof."

This having been disagreed to he offered June 30th the following:

"*And be it further enacted*, That in all cases where vessels belonging to the citizens of the United States may be prohibited from bringing any articles from any foreign port or place, by laws or regulations of the sovereign thereof, into any port or place within the United States, the vessels belonging wholly or in part to the subjects of such sovereign shall, after the —— day of —— during the continuance of such prohibition, be prohibited from bringing like articles into the United

As to the distinction proposed between nations in treaty and not in treaty, that point had been discussed and decided yesterday, and was no part of the argument to-day. It was agreed on all hands, that the measure reported by the committee was levelled against a particular nation, though it was not named. Why then ostensibly involve other nations for whom it was not intended; and by making no difference in favor of those in treaty, teach others to consider a treaty with us as of no value? He said, we were the less restrained from making the distinction, because the nation against which the measures were designed to operate, had not hesitated to set the example, as far as her supposed interest went. He had before shown, that the principle on which the trade with the West Indies was regulated by Great Britain, was a departure from the principle of her navigation act: according to that act, all other nations were allowed to carry directly their own produce in their own vessels, wherever the same trade was allowed by the act to British vessels. A gentleman from Pennsylvania (Mr. FITZSIMONS) was afraid the measure was too bold a one. But why was it too bold, if, as the weighty information and arguments of the gentleman himself had

States, on pain of being seized and forfeited to their use. And the masters or owners of all foreign vessels clearing from any port of the United States, with any articles, the growth, produce, or manufacture thereof, shall give bond, with sufficient security, that no part of the said articles shall be delivered at any port or place to which vessels belonging to citizens of the United States may not be permitted to transport like articles from the United States.

"*And be it further enacted*, That in all cases where vessels belonging to citizens of the United States may be prohibited by the laws or regulations of that foreign country from carrying thereto articles not the growth, produce, or manufacture of the United States, the vessels belonging wholly or in part to the subjects, citizens, or inhabitants of such country shall, after the —— day of —— and during the continuance of such prohibition, be prohibited in like manner from bringing any articles not the growth, produce, or manufacture of such country into the United States, on pain of being seized and forfeited to their use."

shown, there was no danger? If the existence of the West Indies, and the prosperity of Great Britain depended so materially on the trade with the United States, that it would be madness in her to hazard an interruption of it?

Mr. M. then proceeded to review the European and West India commerce of the United States. He stated the imports to be, from Europe, about £3,039,000; from the West Indies, £927,438: total, £3,966,438. The exports to Europe, £3,203,448; to the West Indies, £941,552: total, £4,244,000.

He stated the export and return freight to Europe to be estimated at £500,000; to the West Indies, £250,000: total, £750,000. For the return freight, which was estimated at one-tenth of the export freight, he deducted £45,454 10*s*., which left for the value of the export freight to Europe £454,545 10*s*. By applying a like rule to the West India freight, he made the total export freight to amount to £681,818 5*s*.; of this he computed two-thirds, or £454,545 10*s*., to be enjoyed by British vessels. He took notice here, that the proportion of foreign to British tonnage, employed in the exports of Great Britain, was stated by Lord Sheffield as no more than one to twelve.

The amount of the freight, at two pounds sterling per ton, employs 227,272 tons of shipping; or, allowing two voyages a year, 568 vessels of 200 tons burden each.

The shipping, allowing six men to 100 tons, employs 6,816 seamen; or allowing one man to fifteen tons, which was perhaps a better estimate, 7,575 seamen.

He asked whether it was conceivable that Great Britain would give up all these advantages, rather than put the commerce of the two countries on such a footing as would be reasonable and reciprocal? Whether she would throw away, and into her rival's hands too, a freight of near half a million sterling? Whether she could bear to see between five and six hundred vessels rotting in port, or sold to others to be employed in the business, sacrificed by her? He asked what would become of seven or eight thousand seamen, thus turned

out of employment? And whether they would not enter into the service of other nations, and particularly of the United States, to be employed in the exportation of our produce?

He took notice of the immense loss that would be sustained by the British merchants on the capital employed in the American trade, particularly the rice and tobacco. Near one hundred thousand hogshead of tobacco, not more than ten or twelve thousand of which were consumed in Great Britain, annually went almost all through their hands. The same thing might be said of one hundred thousand barrels of rice annually exported from the United States.

The manufacturers, he said, would be still more distressed by the want of the American market. Many articles, which were luxuries to this country, and which it would be better without, gave bread to that class of people. Their distresses would increase the spirit of emigration, already so much dreaded by the policy of that nation. He observed, that Great Britain would be the more unwilling to risk an interruption of her trade to the United States, because it would hasten the establishment of American manufactures, which she had always endeavored to prevent, and thereby cut off forever this important market for her. Such a danger would be particularly alarming, as her three great staple manufactures, of leather, iron, and wool, were those which were making the greatest progress in this country, and would be the most aided at her expense.

As to the British West Indies, it had been fully shown that they could neither prosper nor subsist without the market of the United States; they were fed from our granaries. Without our lumber, which, it was admitted, could be supplied no where else, they could not carry on their trade, or support their establishments. In the sale of their rum, on which the profits of their labor essentially depended, they had no resource but in the consumption of this country. He said, the whole amount of rum sent to other foreign countries did not exceed eight or nine hundred thousand gallons, which was

not more than one-fifth of what was imported into the United States; besides their loss in this respect, they would have the mortification to see the vacancy in our market filled by rum made from molasses supplied by rival islands. In case of war, which happened every ten or twelve years, or a season of famine, which happened every three or four, he said the condition of the British islands must evidently be such, that she could not fail to provide against the contingency by proper concessions, unless she should infer from our conduct that they are not necessary.

He added, as a consideration which he thought of great weight, in favor of the measure, that in case any negotiations should take place it would put our Executive on proper ground. At present the trade with Great Britain was precisely in that situation which her interest required, and her King could moreover regulate it according to circumstances. On our part, the Executive could neither offer nor withdraw anything. He could offer nothing, because Great Britain was already in possession of every commercial privilege she desired. He could not say, give us reciprocal privileges, or yours shall be withdrawn, because this must be done by a legislative act. By passing the act proposed, the Executive will be enabled to speak a language proper for the occasion. He can say, if you do not give the United States proper privileges, those given to you shall not be continued.[1]

[1] TO EDMUND PENDLETON.

N. York March 4, 1790.

Dear Sir

Your recommendation of Doc^{r} M (illegible) was handed me some time ago. I need not tell you that I shall always rely on your vouchers for merit, or that I shall equally be pleased with opportunities of forwarding your wishes.

The only Act of much consequence which the present Session has yet produced, is one for enumerating the Inhabitants as the basis of a reapportionment of the Representation. The House of Rep^{s} has been chiefly employed of late on the Report of the Sec^{y} of the Treasury. As it has been printed in all the Newspapers I take for granted that it must have fallen under your eye. The plan which it proposes is in

JULY 6—LOCATION OF THE CAPITAL.

Mr. MADISON.—In order to decide this question rightly, we ought to compare the advantages and disadvantages of the two places as they relate to the good of the United States.

general well digested, and illustrated & supported by very able reasoning. It has not however met with universal concurrence in every part. I have myself been of the number who could not suppress objections. I have not been able to persuade myself that the transactions between the U. S. and those whose services were most instrumental in saving their country, did in fact extinguish the claims of the latter on the justice of the former; or that there must not be something radically wrong in suffering those who rendered a bona fide consideration to lose $\frac{7}{8}$ of their dues, and those who have no particular merit towards their country to gain 7 or 8 times as much as they advanced. In pursuance of this view of the subject, a proposition was made for redressing in some degree, the inequality. After much discussion, a large majority was in the negative. The subject at present before a Committee of the whole, is the proposed assumption of the State debts. On this, Opinions seem to be pretty equally divided. Virg.ª is endeavoring to incorporate with the measure some effectual provision for a final settlement and payment of balances among the States. Even with this ingredient, the project will neither be just nor palatable, if the assumption be referred to the present epoch, and by that means deprives the States who have done most, of the benefit of their exertions. We have accordingly made an effort, but without success to refer the assumption to the state of the debts at the close of the war. This would probably add $\frac{1}{3}$ more to the amount of the Debts, but would more than compensate for this by rendering the measure more just & satisfactory. A simple unqualified assumption of the existing debts would bear peculiarly hard on Virginia. She has paid I believe a greater part of her quotas since the peace than Mass.ts She suffered far more during the war. It is agreed that she will not be less a Creditor on the final settlement, yet if such an assumption were to take place she would pay towards the discharge of the debts, in the proportion of $\frac{1}{5}$ and receive back to her Creditor Citizens $\frac{1}{7}$ or $\frac{1}{8}$, whilst Mass.ts would pay not more than $\frac{1}{7}$ or $\frac{1}{8}$, and receive back not less than $\frac{1}{5}$. The case of S. Carol.ª is a still stronger contrast In answer to this inequality we are referred to the final liquidation for which provision may be made. But this may *possibly* never take place. It will *probably* be at some distance. The payment of the balances among the States will be a fresh source of delay

Now, I will defy any gentleman, however sanguine he may be with respect to Baltimore, to point out any substantial advantage that is not common to the Potomac; and I defy him to disprove that there are not several important advantages

& difficulties. The merits of the plan independently of the question of equity, are also controvertible, tho' on the other side there are advantages which have considerable weight.

We have no late information from Europe more than what the Newspapers contain. France seems likely to carry thro' the great work in which she has been laboring. The Austrian Netherlands have caught the flame, and with arms in their hands have renounced the Government of the Emperor forever. Even the lethargy of Spain begins to awake at the voice of liberty which is summoning her neighbors to its standard. All Europe must by degrees be aroused to the recollection and assertion of the rights of human nature. Your good will to mankind will be gratified with this prospect, and your pleasure as an American be enhanced by the reflection that the light which is chasing darkness & despotism from the old World, is but an emanation from that which has procured and succeeded the establishment of liberty in the new.—*Mad. MSS.*

TO EDMUND RANDOLPH.

N. Y., Mar 14, 1790

MY DEAR FRIEND,—

I have rec^{d} the few lines you dropped me from Baltimore, and daily expect those promised from Fred^{g} I am made somewhat anxious on the latter point, by the indisposition under which you were travelling.

The question depending at your departure was negatived by a very large majority, though less than stated in the Newspapers. The causes of this disproportion which exceeds greatly the estimate you carried with you cannot be altogether explained. Some of them you will conjecture. Others, I reserve for conversation if the subject should ever enter into it. As far as I have heard, the prevailing sense of the people at large does not coincide with the decision, and that delay and other means might have produced a very different result.

The assumption of the State debts has of late employed most the H. of Rep^{s}. A majority of 5 agreed to the measure in Com^{e} of the Whole. But it is yet to pass many defiles, and its enemies will soon be reinforced by N. Carolina. The event is consequently very doubtful. It could not be admissible to Virg^{a} unless subservient to final

belonging to the Potomac, which do not appertain to Baltimore. The committee have had ample information with respect to the Northern and Southern positions of the two

justice, or so varied as to be more consistent with intermediate justice. In neither of these respects has V^a^ been satisfied, and the whole delegation is ag^st^ the measure except *Bland!!*[1]

The *substance* of the Secretary's arrangements of the Debts of the Union has been agreed to in Com^e^ of the Whole and will probably be agreed to by the House. The number of alterations have been reduced for the sake of greater simplicity, and a disposition appears at present, to shorten the duration of the Debt. According to the Report, the Debt w^d^ subsist 40 or 50 years, which, considering intermediate probabilities, amounts to a perpetuity. Adieu

Mr. Jefferson is not arrived. He has notified his acceptance & is expected in a day or two.—*Mad. MSS.*

TO EDMUND RANDOLPH.

N. Y., Mar. 21, 1790.

DEAR SIR

Your favor of the 10th came to hand yesterday. I feel much anxiety for the situation in which you found Mrs. Randolph; but it is somewhat alleviated by the hopes which you seem to indulge.

The language of Richmond on the proposed discrimination does not surprise me. It is the natural language of the towns, and decides nothing. Censure I well knew would flow from those sources. Should it also flow from other sources, I shall not be the less convinced of the right of the measure, or the less satisfied with myself for having proposed it. The conduct of the Gentlemen in Amherst & Culpeper proves only that their personal animosity is unabated. Here it is a charge ag^st^ me that I sacrificed the federal to anti federal Sentiments. I am at a loss to divine the use that C [a] b [e] ll and S-t [even] can make of the circumstance.

The debates occasioned by the Quakers have not yet expired.[2]

[1] Bland who had been an opponent of the adoption of the constitution had changed his views. March 9, 1790, he wrote to Patrick Henry that having sworn to support the constitution he was voting for every measure of energy and consolidation; that government once assumed over so extensive a domain must fall into anarchy or be supported with vigor.—Henry's *Henry, III.*, 418. He died June 1, 1790.

[2] Petitions from the Society of Friends in New York and Philadelphia against the slave trade.

places. In point of salubrity of air, without disparaging the pretensions of Baltimore, the Potomac is at least equally favored in that respect. In regard to centrality of situation,

The stile of them has been as shamefully indecent as the matter was evidently misjudged. The true policy of the South^n^ members was to have let the affair proceed with as little noise as possible, and to have made use of the occasion to obtain along with an assertion of the powers of Cong^s^ a recognition of the restraints imposed by the Constitution.

The State debts have been suspended by the preceding business more than a Week. They lose ground daily, & the assumption will I think ultimately be defeated. Besides a host of objections ag^st^ the propriety of the measure in its present form, its practicability becomes less & less evident. The case of the paper money in Georgia S. C., N. C., &c to R. Isl^d^, is a most serious difficulty. It is a part of the debts of those States, and comes in part within the principle of the assumption.

A packet arrived a few days ago but threw little light on the affairs of Europe. Those of France do not recede but their advance does not keep pace with the wishes of liberty. Remember me to Mr. M— & his land lady

Y^rs^ Aff^ly^

Mr. Jefferson is not yet here. The bad roads have retarded him. We expect him today or tomorrow. I am this instant told he is come.—*Mad. MSS.*

TO EDMUND PENDLETON.

N. York April 4, 1790.

Dear Sir

You will see by the papers herewith covered that the proposed assumption of the State debts continues to employ the deliberations of the House of Rep^s^. The question seems now to be near its decision, and unfortunately, tho' so momentous a one, is likely to turn on a very small majority, possibly on a single vote. The measure is not only liable to many objections of a general cast, but in its present form is particularly unfriendly to the interests of Virginia. In this light it is viewed by all her representatives except Col: Bland.

The American Revolution with its foreign and future consequences, is a subject of such magnitude that every circumstance connected with it, more especially every one leading to it, is already and will be more and more a matter of investigation. In this view I consider the proceedings in Virginia during the crisis of the Stamp-Act as worthy of particular remembrance, and a communication of them as a sort of

the Potomac has undoubtedly the advantage. In respect to security from invasion, I aver the Potomac has the advantage also. With relation to the Western country, there is not a

debt due from her cotemporary citizens to their successors. As I know of no memory on which my curiosity could draw for more correct or more judicious information, you must forgive this resort to yours. Were I to consult nothing but my curiosity, my enquiries would not be very limited. But as I could not indulge that motive fully, without abusing the right I have assumed, my request goes no farther than that you will, as leisure & recollection may permit, *briefly* note on paper—by whom & how the subject commenced in the Assembly, where the resolutions proposed by Mr. Henry *really* originated; what was the sum of the arguments for and against them, and who were the principal speakers on each side; with any little anecdotes throwing light on the transaction, on the characters concerned in it, or on the temper of the Colony at the time.[1]

Begging pardon again for the tax I am laying on your benevolence, I remain Dear Sir

Your most affect^e^ & hble Serv^t^ —*Mad. MSS.*

TO HENRY LEE.

N. York April 13th, 1790.

Dear Sir

Your favor of the 4th ult. by Col. Lee was received from his hands on Sunday last. I have since rec^d^ that of the 3d Instant. The antecedent one from Alexandria, though long on the way, was rec^d^ some time before. In all these, I discover strong marks of the dissatisfaction with which you behold our public prospects. Though in several respects they do not comport with my wishes, yet I cannot feel all the despondency which you seem to give way to. I do not mean that I entertain much hope of the Potomac; that seems pretty much out of sight; but that other measures in view, however improper, will be less fatal than you imagine.[2]

[1] May 2, 1790, Madison wrote to Pendleton acknowledging the receipt of the desired information. He had asked it supposing Pendleton was present at the time, which, he added, "I find was not the case." He sent Pendleton's letter to William Wirt when Wirt was preparing his *Life of Patrick Henry*, but Wirt never returned it. In the *Life of Henry*, p. 74 *et seq.* it appears that Pendleton *was* present when Henry's resolutions were debated and spoke against them.

[2] Lee wrote April 3, 1790, from Berry Hill that all of Patrick Henry's dark predictions were coming true—that he dreaded a dissolution of

shadow of comparison. If we should go as far south as Baltimore, why not an equal distance southwest to the Potomac? Those who are acquainted with the country on the Potomac, and that in the neighborhood of Baltimore, do

The plan of discrimination has met with the reception in Virginia on which I calculated. The towns would for obvious reasons disrelish it, and for a time they always set public opinion. The country in this region of America, in general, if I am not misinformed, has not been in unison with the cities, nor has any of the latter except this, been unanimous against the measure. Here the sentiment was in its full vigor, and produced every exertion that could influence the result.

I think with you that the Report of the Secretary of the Treasury is faulty in many respects; it departs particularly from that simplicity which ought to be preserved in finance, more than anything else. The novelty and difficulty of the Task he had to execute form no small apology for his errors, and I am in hopes that in some instances they will be diminished, if not remedied.

The proposed assumption of the State debts has undergone repeated discussions, and contradictory decisions. The last vote was taken yesterday in a Committee of the whole and passed in the negative 31 vs 29. The minority do not abandon however their object, and tis impossible to foretell the final destiny of the measure. It has some good aspects, and under some modifications would be favorable to the pecuniary interests of Virginia, and not inconsistent with the general principle of justice. In any attainable form it would have neither of these recommendations, and is moreover liable to strong objections of a general nature. It would certainly be wrong to force an affirmative decision on so important and controvertible a point by a bare majority, yet I have little hope of forbearance from that scruple. Mass. & S. Carolina with their allies of Connecticut & N. York are too zealous to be arrested in their project, unless by the force of an adverse majority.

I have rec^{d} your reflections on the subject of a public debt with pleasure; in general they are in my opinion just and important. Perhaps it is not possible to shun some of the evils you point out, without abandoning too much the re-establishment of public credit. But as far as this object will permit I go on the principle that a Public Debt is a Public curse, and in a Rep Gov^{t} a greater than in any other.

the union, but had rather submit to it than to "the rule of a fixed insolent northern majority." Change of the seat of government to the territorial centre, direct taxation, and the abolition of "gambling systems of finance" might effect a change of sentiment.—*Mad. MSS.*

not hesitate to give the preference to the Potomac. It is true, that Baltimore has respectable resources; her rapid growth is a clear proof of it; but look at the resources of the Potomac, the great range of rich country that borders on

I have mentioned Mr Lee[1] to Mr Jefferson who tells me that he found every place preoccupied, and that he has not thought proper to make changes where no special reasons existed; various applications have been made previous to that in behalf of your friend, several had passed through my hands, some of them from Virginia.

I never heard of the report you mention of the Vice Presd[t] It is but justice to say that I cannot believe it to have originated in fact.

I lament with you the inability which impedes arrangements at the Great Falls, which would be of benefit in a Public as well as private view. The prospect of aid in this quarter does not strike me as it seems to do you. Money is destined to other projects at this juncture. Besides I am on no peculiar footing, that could favor an experiment, and could never make it less auspiciously than at present. It gives me much concern that it is not more in my power to forward our object.

Present me most respectfully to Mrs Lee & believe me

Aff[ly] yrs. —*Mad. MSS.*

TO JAMES MONROE.

N. Y. Ap[l] 17. 1790.

Dear Sir

An answer to your favor of the 5[th] has been delayed by my hourly expectation of hearing from Taylor. A few days ago he came to Town and I have had an interview and settlement with him. The balance with the interest at 7 per Ct. was 864 dollars. He has not however executed the conveyance for want of some chart which he could not get here, but has entered into bond to do so by August, with good security. As far as I can learn our bargain is a good one. Land in the vicinity has sold in small parcells at more than 20/. I am told. The present moment however it is said is not favorable to the market. By waiting I think it probable it may be sold to your profit or If you continue to be anxious to get rid of it immediately, I have no objection to taking the whole on myself. Before you decide I would recommend that you consult by letter some of your friends here who can

[1] Probably Charles Lee of the customs service in Alexandria.—*Calendar of Applications and Recommendations for Office during the Presidency of George Washington* (Hunt), 73.

it, and see if these are not advantages that must, in a short time, produce a commercial town. Sir, a period might be named, not exceeding ten years, within which the town of Baltimore obtained the greater part of its increase and

judge better than I can do, and who have more leisure & opportunity for making the requisite enquiry into the prospect. Should you chuse to make me the sole proprietor, it will be most convenient that the deed be executed from Taylor to me. In that event also, I beg you to let me know the state in which the acc^{ts} between us was left, by your former advances for me, and my settlem^{ts} for your furniture &c.[1] My papers on this subject are either not here or so concealed among others that I cannot find them.

The House of Representatives are still at the threshold of the Revenue business. The Assumption of the State debts is the great obstacle. A few days ago it was reconsidered & rejected by 31 agst 29. The measure is not however abandoned. It will be tried in every possible shape by the zeal of its patrons. The Eastern members talk a strange language on the subject. They avow, some of them at least, a determination to oppose all provision for the public debt which does not include this, and intimate danger to the Union from a refusal to Assume. We shall risk their prophetic menaces if we should continue to have a majority.—*Mad. MSS.*

TO JAMES MADISON

N. York May 2^{d} 1790.

Hon^{D} Sir

I wrote some days ago to my brother Ambrose since which little has taken place worth adding. The inclosed newspapers contain a sketch of what has been done in the House of Rep^{s}

I mentioned to my brother that I thought it better to ship or postpone the sale of Tob^{o} than to sell at the present price in the Country. I am more & more convinced that this will be prudent. The price has risen considerably in Europe, and from causes that will be more likely to carry it still higher than let it fall lower. As long indeed as grain keeps up which the state of Europe makes it probable will be for some time, the culture of that article in America, particularly Virginia will divert labor from others, and from Tob^{o} among the rest. This alone will prevent a low price, by circumscribing the quantity raised.

The influenza or something like it but less severe has revisited this quarter of the Union. I have had an attack which has kept me at

[1] See Madison to Monroe, March 19, 1786, *ante*, II, 231.

consequence; a period of ten years will produce the same effects on the Potomac, because the same causes exist; and when, super-added to this, the residence of Government shall

home for several days. I am now pretty well over it, and shall resume my seat in the House tomorrow, or at least shall be able to do it. If no business of consequence should press, perhaps I may indulge myself with two or three holidays for the sake of exercise & recreation. Remind my brother A. to send me a copy of the weather &c. from your diary for the months of Feby March & April, including the heat & cold noted by the Thermometer. When May is over he can send me that also.

Tell Mr. G. Eve that I have heard of a sett of Gill's Commentory. The Price of the Old Testament is £8. of the new £9. Pensylva curry My brother Ambr last letter gave me great pleasure by acquainting me that my mothers health was increasing. I hope it continues to do so. —*Mad. MSS.*

TO JAMES MONROE.

N. Y., June 1, 1790.

Dear Sir

Your favor of the 19th of May has been duly received. The information relating to your little daughter has been communicated as you desired. I hope she is by this time entirely recovered. Your friends in Broadway were well two evenings ago.

I have paid the money to Taylor, and hope you will take the time you intimate for replacing my advances on your account.

The assumption has been revived and is still depending. I do not believe it will take place, but the event may possibly be governed by circumstances not at present fully in view. The funding bill for the proper debt of the U. S. is engrossed for the last reading. It conforms in substance to the plan of the Secretary of the Treasy You will have seen by late papers that an experiment for navigation and commercial purposes has been introduced. It has powerful friends, and from the present aspect of the H. of Reps will suceed there by a great majority. In the Senate its success is not improbable if I am rightly informed. You will see by the inclosed paper that a removal from this place has been voted by a large majority of our House. The other is pretty nearly balanced. The Senators of the 3 Southern States are disposed to couple the permanent with the temporary question. If they do I think it will end in either an abortion of both or in a decision of the former in favour of the Delaware. I have good reason to believe that there is no serious purpose in the Northern States to prefer the

be there, there can be no doubt but that there will be every accommodation that can be desired.

It is said, that before the ten years expire, a repeal of the

Potowmac, and that if supplied with a pretext for a very hasty decision, they will indulge their secret wishes for a permanent establishment on the Delaware. As R. I. is again in the Union & will probably be in the Senate in a day or two, The Potowmac has the less to hope & the more to fear from this quarter. Our friend Col: Bland was a victim this morning to the influenza united with the effects & remains of previous indisposition. His mind was not right for several days before he died. The President has been at the point of death but is recovered. Mr. Jefferson has had a tedious spell of the head-ache. It has not latterly been very severe, but is still not absolutely removed. My best respects to Mrs Monroe. With sincere regard I am Dear Sir. —*Mad. MSS.*

TO JAMES MADISON.

N. York June 13, 1790.

Hon^{D} Sir

My last was to my brother A. and acknowledged the receipt of the Diary. I inclose one for the month of April which you can compare with your own for the same month. I enclose also a few grains of *upland* rice, brought from Timor by Capt. Bligh lately distinguished by an adventure which you must have seen in the newspapers. He was returning from a voyage of discovery in the South seas, and turned out of his ship with a few others by a mutinous crew in a long boat which continued more than 40 days at sea.[1] A little rice of which the enclosed is a part was all that he saved out of a fine collection. It will be best to give the grains their first vegetation in a flower pot of rich earth, and then shift the contents of the pot into the ground so as not to disturb the roots. A few of the grains may be tried at once in the garden in a strong soil.

You will see by the inclosed newspapers that the seat of Gov^{t} has been again on the carpet. After a variety of questions which the state of the votes as you will at once remark do not truly explain. a very unexpected result has happened in favor of Baltimore. It is possible that a like fortuitous one may take place in the Senate, but it does not appear probable. It is much to be apprehended that the final event will not square with the pretensions of the Potowmac, tho' in

[1] William Bligh, captain of the British ship *Bounty*. The mutiny occurred on a voyage to Jamaica. In 1805 he was governor of New South Wales and his authority was rebelled against.

act may take place, and thus Congress be kept at Philadelphia. But what more can we do than pass a law for the purpose? It is not in our power to guard against a repeal. Our acts are not like those of the Medes and Persians, unalterable. A repeal is a thing against which no provision can be made. If that is an objection, it holds good against any law that can be passed. If those States that may have a superiority in Congress at a future day will pay no respect to the acts of their predecessors, or to the public good, there is no power to compel them.

But I flatter myself that some respect will be paid to the

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the chances to which this question is liable, it may possibly turn out otherwise.—I am anxious to hear the progress of my brothers health, and that of my sister Nelly. I hope yours continues good. Mine has been reestablished for some time.—*Mad. MSS.*

TO JAMES MONROE.[1]

NEW YORK, June 17, 1790.

DEAR SIR,—You will find in the inclosed papers some account of the proceedings on the question relating to the seat of Government. The Senate have hung up the vote for Baltimore, which, as you may suppose, could not have been seriously meant by many who joined in it. It is not improbable that the permanent seat may be coupled with the temporary one. The Potowmac stands a bad chance, and yet it is not impossible that in the vicissitudes of the business it may turn up in some form or other.

The assumption still hangs over us. The negative of the measure has benumbed the whole revenue business. I suspect that it will yet be unavoidable to admit the evil in some qualified shape. The funding bill is before the Senate, who are making very free with the plan of the Secretary. A committee of that body have reported that the alternatives be struck out, the interest reduced absolutely to 4 per cent., and, as I am informed, the indents be not included in the provision for the principal.

TO EDMUND PENDLETON.

NEW YORK, June 22, 1790.

DEAR SIR,—The pressure of business as the session approaches its term, the earlier hour at which the House of Representatives has for

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[1] This and the next two letters are from the Works of Madison.

public interest, and to the plighted faith of the Government. As to centrality, the best evidence we have at this time in favor of the Potomac is the different travelling of the members; and this, sir, proves incontestably that the proposed place on the Potomac is near the centre. If any arguments could be brought against it, it is its being too far to the Northward, for the mileage south of the Potomac is twelve thousand seven hundred and eighty-two miles, to the north of it twelve thousand four hundred and twenty-two miles. If to this Rhode Island be added, it will not be more than equal. If the bill once passes, I am not under any apprehensions of a

some time met, and the necessity of devoting a part of the interval to exercise, after so long a confinement, have obliged me to deny myself the pleasure of communicating regularly with my friends. I regret much that this violation of my wishes has unavoidably extended itself to the correspondences on which I set the greatest value, and which, I need not add, include yours. The regret is the greater, as I fear it will not be in my power to atone for past omissions by more punctuality during the residue of the session. In your goodness alone I must consequently look for my title to indulgence.

The funding and Revenue systems are reduced by the discord of opinions into a very critical state. Out of this extremity, however, some effective provision must, I think, still emerge. The affair of the State debts has been the great source of delay and embarrassment, and, from the zeal and perseverance of its patrons, threatens a very unhappy issue to the session, unless some scheme of accommodation should be devised. The business of the seat of Government is become a labyrinth, for which the votes printed furnish no clue, and which it is impossible in a letter to explain to you. We are endeavoring to keep the pretensions of the Potowmac in view, and to give to all the circumstances that occur a turn favorable to it. If any arrangement should be made that will answer our wishes, it will be the effect of a coincidence of causes as fortuitous as it will be propitious. You will see by the papers inclosed that Great Britain is itching for war. I do not see how one can be avoided, unless Spain should be frightened into concessions. The consequences of such an event must have an important relation to the affairs of the United States. I had not the pleasure of seeing Col. Hoomes during his momentary stay in New York, but had that of hearing that he gave a very favorable account of your health.

repeal; but if danger of repeal does exist, it is of that kind against which we cannot guard. Sir, we should calculate on accepting the bill as it now stands; we ought not to risk it by making any amendment. We have it now in our power to procure a Southern position. The opportunity may not again speedily present itself. We know the various and jealous interests that exist on this subject. We should hazard nothing. If the Potomac is struck out, are you sure of getting Baltimore? May no other place be proposed? Instead of Baltimore, is it not probable we may have Susquehanna inserted, perhaps the Delaware? Make any amendment, sir, and the bill will go back to the Senate. Are we sure that it will come back into our possession again? By amending, we give up a certainty for an uncertainty. In my opinion, we shall act wisely, if we accept the bill as it now stands, and I beg leave to press it on gentlemen not to consent to any alteration, lest it be wholly defeated and the prospect of obtaining a Southern position vanish for ever.[1]

[1] TO JAMES MONROE.

NEW YORK, July 4, 1790.

DEAR SIR,—You will find by one of the Gazettes herewith sent, that the bill fixing the permanent seat of Government on the Potowmac, and the temporary at Philadelphia, has got through the Senate. It passed by a single voice only, Izzard and Few having both voted against it. Its passage through the House of Representatives is probable, but attended with great difficulties. If the Potowmac succeeds, even on these terms, it will have resulted from a fortuitous coincidence of circumstances which might never happen again.[1]

The provision for the public debt has been suspended for some time in the Senate by the question relating to the seat of Government. It is now resumed in that House, and it is to be hoped will soon be brought to an issue. The assumption sleeps, but I am persuaded will be awakened on the first dawn of a favorable opportunity. It seems, indeed, as if the friends of the measure were determined to risk everything rather than suffer that finally to fail.

We hear nothing further of the controversy between England and Spain.

[1] The bill was passed by the House July 9th.

SPEECHES IN THE FIRST CONGRESS—THIRD SESSION, 1791.

FEBRUARY 2.—BANK OF THE UNITED STATES.

Mr. MADISON began with a general review of the advantages and disadvantages of banks. The former, he stated, to consist in, first, the aid they afford to merchants, who can thereby

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TO JAMES MADISON.

N. Y. July 31, 1790.

HONᴰ SIR

I have recᵈ your's of the 9ᵗʰ inclosing a letter for Mʳ Chew which I shall forward as you desire.

As far as I have had an opportunity of inquiring I do not find that Coffee can be got here on terms that will make it worth while to prefer it to what can be got in Virginia. The price of brown sugar I have not yet learnt but will attend to your request on that subject.

The funding bill has at length passed the two Houses with a qualified assumption of the state debts. ⅔ of the federal debt are to bear an immediate interest of 6 per cᵗ and the remaining ⅓ a like interest to commence in 1800, but in the mean time to be receivable for land. The indents & arrears of interest are funded at 3 per Ct. of the state debts ⅔ are funded at 6 per cᵗ. & at 3 per Cᵗ The assumption was carried by a small majority in both Houses. Many who voted for it did so on a supposition that it was a lesser evil than to risk the effect of a rejection on the states which insisted on the measure. I could not bring myself to concur with them, but am sensible that there was serious danger of a very unfavorable issue to the Session from a contrary decision, and consider it as now incumbent on us all to make the best of what is done. The truth is that in a pecuniary light, the assumption is no longer of much consequence to Virginia, the sum allotted to her being about her proportion of the whole, & rather exceeding her present debt. She will consequently pay no more to the general Treasury than she now pays to the State Treasʸ and perhaps in a mode which will be less disagreeable to the people, tho not more favorable to their true interests.

The Ways & means are now under consideration. The impost will be made equal to the federal debt. The provision for the State debts will be put off till the next session. It will be likely to consist chiefly of duties on rum distilled in the U.S. and on a few imported articles that will best bear a further augmentation.

We expect that an adjournment will take place in about a week. I shall set out for Virginia as soon thereafter as I can pack up my books papers &c. which will detain me here some days. Mʳ Jefferson wishes

push their mercantile operations further with the same capital. Second. The aids to merchants in paying punctually the customs. Third. Aids to the Government in complying punctually with its engagements, when deficiencies or delays happen in the revenue. Fourth. In diminishing usury. Fifth.

me to wait for his setting out and as his company will be particularly grateful & also convenient I am not sure that I shall resist the invitation, if he finds that he can be ready for the Journey within a reasonable time. I sh[d] not hesitate, if I did not wish to be in Orange by the election, tho' as an attendance cannot be given at more than one of the 8 Counties, it does not seem worth while to sacrifice much to that consideration.—*Mad. MSS.*

TO JAMES MADISON.

N. Y. Aug[st] 14[th] 1790

HON[D] SIR

Cong. not having closed their Session till the day before yesterday, and the weather being extremely hot, I have thought it necessary in order to avoid the danger of a bilious attack to which I am become very subject, to wait here a few weeks which will render the journey more safe, and afford me moreover the pleasure of M[r] Jeffersons company quite to Orange. This resolution puts it out of my power to be within the district by the time of the election, and makes it proper that I should intimate the cause of it to a friend in each County. The inclosed are part of the letters written for that purpose.[1] I fear the

[1] NEW YORK Aug: 13, 1790

DEAR SIR

The Session of Cong[s] was called yesterday. The list of acts inclosed will give you a general idea of what has been done. The subjects which conduced most to the length of the Session are the assumption of the State debts, and the Seat of Government. The latter has been decided in a manner more favorable to Virginia than was hoped. The former will be less acceptable to that State. It has however been purged of some of its objections and particularly of its gross injustice to Virginia, which in a pecuniary view is little affected one way or the other.

The Continental debt, as funded, is provided for by the impost alone, and a surplus of about a million of dollars, which will have accumulated prior to the first payment of interest, is allotted to the purpose of reducing, by buying up, the principal. The provision for the State debts assumed is to be the work of the next Session in December. It will be made, as far as can be inferred from the ideas now

In saving the wear of gold and silver kept in the vaults, and represented by notes. Sixth. In facilitating occasional remittances from different places where notes happen to circulate.

The effect of the proposed bank, in raising the value of

time may be short for conveying them, but hope opportunities may be found. The letter which is not directed is meant for each one of the gentlemen in Louisa, as you and my brother A. may think most proper Should the High Sheriff be not improper, perhaps it would be as well for you to address it to him. Perhaps also my brother Ambrose may find it convenient to be at the Election in Louisa. The Letter for Col: Pendleton will be best in the hands of my brother William who I presume will attend in Culpeper. Two of the letters being unsealed I refer to their contents, remaining your affᵗ son.

N. B. I have recd. the letter for Mʳ Jos. Chew &c.—*Mad. MSS.*

prevalent, under the influences of a strong zeal to avoid direct taxes. The Eastern States being even more averse to that mode of revenue than the Southern, and in my judgment, with much more reason.

It was my purpose to have been within the district before the Election; but the length of the Session has disappointed me. By pushing directly on I might indeed now affect it. But it would be at the risk of my health, which is not at present very firm, and would be particularly exposed on a long & rapid journey at this season of the year. I shall consequently remain in this place for a few weeks presuming that the circumstance of my being present or absent will weigh little with my constituents in deciding whether they will again confide their interests to my representation—

With great respect & regard I am Sir
Your moˢ obedᵗ hble Sᵗ

Jˢ Madison Jr.

Be so good as not to let this fall into any hands from which it may find its way to the press.

A. Rose
G. Paine
T. Underwood
G. Thomson
W. C. Nicholas
G. Gilmer
of Louisa
Mann Page Esq.
Js. Pendleton Esq.—*Mad. MSS.*

stock, he thought had been greatly overrated. It would no doubt raise that of the stock subscribed into the bank; but could have little effect on stock in general, as the interest on it would remain the same, and the quantity taken out of the market would be replaced by bank stock.

TO JAMES MADISON.

PHILAD^{A} Nov^{r} 28, 1790

HON'D SIR

We arrived here yesterday was a week without any occurrence on the road worth mentioning. The President arrived yesterday & the members are coming in for Congress. I have made inquiry with regard to the articles you want, and send you the inclosed paper which will give you information not only with respect to them, but all others in the market here. The high price of sugar makes it advisable I think not to purchase at present. Coffee seems low enough but I do not see any probability of a rise that will be more than equivalent to the loss of the money vested in an article stored away. I shall however await your instructions on this point as well as others; or if I should meet with a bargain on account either of cheapness or quality, perhaps embrace it for you.

The price of securities at which Maj^{r} Moore's certificates would have been sold is 12/6 in the pound, at which of course you are to settle with him. I have forwarded his letter to his son John, with 3 half Jos. & notice of the fund in my hands for him. Of this you will inform my Uncle.

I hope this will find all well and my bro'r Ambrose restored. Tell him I shall expect to hear often from him as well as yourself. I hope you have not forgotten to pay Maj^{r} Lee, and that Robin & the will have given Sawney the aids necessary for the jobb I left unfinished. With my love to my mother & regards for the family I remain your aff^{t} son.—*Mad. MSS.*

TO EDMUND PENDLETON.

PHILAD^{A}, Jany 2d, 1791.

DEAR SIR

Previous to my leaving N. Y., I rec^{d} a letter from you which was not then answered, because the subject of it required more consideration than could then be spared and because an answer was not prompted by anything agitated or proposed on the subject in Congress. I am afraid that notwithstanding the interval which has passed I am still not sufficiently prepared to do justice to your queries, some of which are of a delicate, and all of which are of an important nature. I am

The principal disadvantages consisted in, first, banishing the precious metals, by substituting another medium to perform their office. This effect was inevitable. It was admitted by the most enlightened patrons of banks, particularly by *Smith on the Wealth of Nations*. The common answer to

however the less concerned on this account, as I am sure that your own reflections will have embraced every idea, which mine, if ever so mature, could have suggested.

Your first quere is, are the words of the Treaty "there shall be no legal impediment to the bona fide recovery of debts on either side," a law of repeal, or a covenant that a law of repeal shall be passed? As Treaties are declared to be the supreme *law* of the land, I should suppose that the *words* of the *treaty* are to be taken for the *words* of the *law*, unless the stipulation be expressly or necessarily executory, which does not in this instance appear to be the case.

"Was not the contrary the sense of the Congress who made the Treaty, when they called on the States to repeal the several laws containing such impediments?" As well as I recollect, the Act of Congress on that occasion supposed the impediments to be repealed by the Treaty, and recommended a repeal by the States, merely as declaratory and in order to obviate doubts and discussions. Perhaps too, on a supposition that a legal repeal might have been necessary previous to the new Constitution, it may be rendered unnecessary by the terms of this instrument above quoted, which seem to give a *legal* force to the Treaty.

"Admitting the treaty to be a law of repeal, what is the extent of it? does it repeal all acts of limitation, & such as regulate the modes of proving debts?" This question probably involves several very nice points, and requires a more critical knowledge of the state of the American laws, the course of legal proceedings, and the circumstances of the British debts, than I possess. Under this disadvantage, I am afraid to say more than that the probable intention of the parties, and the expression "bona fide recovery of debts," seem to plead for a liberal & even favorable interpretation of the article. Unless there be very strong and clear objections, such an interpretation would seem to require that the debts should be viewed as in the State in which the original obstacles to their recovery found them, so far at least as the nature of the case will permit.

"What is meant by the *Supreme law* as applied to treaties? is it like those of the Medes & Persians unalterable? or may not the contracting powers annul it by consent? or a breach on one side discharge the other from an obligation to perform its part?" Treaties as I

the objection was, that the money banished was only an exchange for something equally valuable that would be imported in return. He admitted the weight of this observation in general; but doubted whether, in the present habits of this

understand the Constitution are made *Supreme* over the Constitutions and laws of the particular States, and, like a subsequent law of the U. S., over pre-existing laws of the U. S. provided however that the Treaty be within the prerogative of making Treaties, which no doubt has certain limits.

That the contracting powers can annul the Treaty, cannot I presume, be questioned, the same authority precisely being exercised in annulling as in making a Treaty.

That a breach on one side (even of a single article, each being considered as a condition of every other article) discharges the other, is as little questionable; but with this reservation, that the other side is at liberty to take advantage or not of the breach, as dissolving the Treaty. Hence I infer that the Treaty with G. B., which has not been annulled by mutual consent, must be regarded as in full force, by all on whom its execution in the U. S. depends, until it shall be declared by the party to whom a right has accrued by the breach of the other party to declare, that advantage is taken of the breach, & the Treaty is annulled accordingly. In case it should be advisable to take advantage of the adverse breach, a question may perhaps be started, whether the power vested by the Constitution with respect to Treaties in the President & Senate, makes them the competent Judges, or whether, as the Treaty is a law the whole Legislature are to judge of its annulment, or whether in case the President & Senate be competent in ordinary Treaties, the Legislative authority be requisite to annul a *Treaty of peace*, as being equivalent to a Declaration of War, to which that authority alone, by our Constitution, is competent.

Mr. White tells me he has sent you a copy of Col: Hamilton's plan of a Bank. I do not therefore inclose one. I augur that you will not be in love with some of its features. Mr. Randolph's Report on the Judiciary is not yet printed. I know that a copy is allotted for you. The report of the ways & means from the Treasury Dep^{t} for the assumed debt, has been in the Newspapers & has I presume found its way to you thro' that channel. There are objections of different sorts to the proposed mode of revenue. But as direct taxes w^{d} be still more generally obnoxious, and as imports are already loaded as far as they will bear, an excise is the only resource, and of all articles, distilled spirits are least objectionable. Indeed the duty imposed on imported rum, forces a proportional duty on Country rum, and from the latter

country, the returns would not be in articles of no permanent use to it.

Second. Exposing the public and individuals to all the

a duty on other spirits distilled at home results of course. There is of consequence scarce an option.

The Militia bill and a plan for disposing of the Public lands have been under consideration for some time, and have made some progress; but are not in a state as yet from which their final shape can be decided. The Senate have before them the Bank, the report of the Sec^{y} of State on weights & measures, and the case of Kentucky. This last subject has experienced no other difficulties than what proceeded from some little scruples concerning punctilios in the transition from the old to the new station of the District. I understand from Col: Monroe, that the Senate are really disposed to forward the object. Vermont will probably soon follow, and may even be a member of the Union, before the period to which the law of Virginia postpones the actual admission of Kentucky.

The Gazette of last evening contains the following paragraph under the Philad^{a} head—"By an Express which arrived this afternoon at the Post office from Lewistown, near the Capes of Delaware, we have rec^{d} letters from London down to the 4th of November. The following letter will convey important intelligence to the American Public:

Copy of a letter rec^{d} by the Lord Mayor of London from the Duke of Leeds.

I have the honour to acquaint your Lordship that the Messenger Dressin arrived here this morning with despatches from Mr. Fitzherbert, Ambassador at the Court of Madrid, dated Sunday, 24 Octob^{r} containing an account that a convention for terminating the differences which had arisen with that Court had been agreed upon between his Excellency on the part of his Majesty, and the C^{t} de Florida Blanca, on the part of the Catholic King; and that the Convention was to be signed and exchanged by those Ministers the 27 of the same month.

LONDON, 4 Nov^{r}. (Signed) LEEDS

From this extract it may be concluded, unless there be a forgery not to be suspected, that the question which has been so long depending between G. B. & Spain has issued in peace.

The date of my letter reminds me of the compliments which belong to the Season. I offer them with the sincerest wish that they may yet often be repeated to you, and that the state of health in which this will find you may promise that satisfaction to all your friends, among whom no one will enjoy it in a higher degree than,

Your affec^{te} & Obed^{t} Serv^{t}.—*Mad. MSS.*

evils of a run on the bank, which would be particularly calamitous in so great a country as this, and might happen from various causes, as false rumors, bad management of the institution, an unfavorable balance of trade from short crops, &c.

It was proper to be considered, also, that the most important of the advantages would be better obtained by several banks, properly distributed, than by a single one. The aids to commerce could only be afforded at or very near the seat of the bank. The same was true of aids to merchants in the payment of customs. Anticipations of the Government would also be most convenient at the different places where the interest of the debt was to be paid. The case in America was different from that in England: the interest there was all due at one place, and the genius of the Monarchy favored the concentration of wealth and influence at the metropolis.

He thought the plan liable to other objections. It did not make so good a bargain for the public as was due to its interests. The charter to the Bank of England had been granted for eleven years only, and was paid for by a loan to the Government on terms better than could be elsewhere got. Every renewal of the charter had, in like manner, been purchased; in some instances, at a very high price. The same had been done by the Banks of Genoa, Naples, and other like banks of circulation. The plan was unequal to the public creditors; it gave an undue preference to the holders of a particular denomination of the public debt, and to those at and within reach of the seat of Government. If the subscriptions should be rapid, the distant holders of evidences of debt would be excluded altogether.

In making these remarks on the merits of the bill, he had reserved to himself the right to deny the authority of Congress to pass it. He had entertained this opinion from the date of the Constitution. His impression might, perhaps, be the stronger, because he well recollected that a power to grant charters of incorporation had been proposed in the General Convention and rejected.

Is the power of establishing an incorporated Bank among the powers vested by the Constitution in the Legislature of the United States? This is the question to be examined.

After some general remarks on the limitations of all political power, he took notice of the peculiar manner in which the Federal Government is limited. It is not a general grant, out of which particular powers are excepted; it is a grant of particular powers only, leaving the general mass in other hands. So it had been understood by its friends and its foes, and so it was to be interpreted.

As preliminaries to a right interpretation, he laid down the following rules:

An interpretation that destroys the very characteristic of the Government cannot be just.

Where a meaning is clear, the consequences, whatever they may be, are to be admitted—where doubtful, it is fairly triable by its consequences.

In controverted cases, the meaning of the parties to the instrument, if to be collected by reasonable evidence, is a proper guide.

Contemporary and concurrent expositions are a reasonable evidence of the meaning of the parties.

In admitting or rejecting a constructive authority, not only the degree of its incidentality to an express authority is to be regarded, but the degree of its importance also; since on this will depend the probability or improbability of its being left to construction.

Reviewing the Constitution with an eye to these positions, it was not possible to discover in it the power to incorporate a Bank. The only clauses under which such a power could be pretended are either:

1. The power to lay and collect taxes to pay the debts, and provide for the common defence and general welfare: or,

2. The power to borrow money on the credit of the United States: or,

3. The power to pass all laws necessary and proper to carry into execution those powers.

The bill did not come within the first power. It laid no tax to pay the debts, or provide for the general welfare. It laid no tax whatever. It was altogether foreign to the subject.

No argument could be drawn from the terms "common defence and general welfare." The power as to these general purposes was limited to acts laying taxes for them; and the general purposes themselves were limited and explained by the particular enumeration subjoined. To understand these terms in any sense, that would justify the power in question, would give to Congress an unlimited power; would render nugatory the enumeration of particular powers; would supersede all the powers reserved to the State Governments. These terms are copied from the articles of Confederation; had it ever been pretended that they were to be understood otherwise than as here explained?

It had been said, that "general welfare" meant cases in which a general power might be exercised by Congress, without interfering with the powers of the States; and that the establishment of a National Bank was of this sort. There were, he said, several answers to this novel doctrine.

1. The proposed Bank would interfere, so as indirectly to defeat a State Bank at the same place.

2. It would directly interfere with the rights of the States to prohibit as well as to establish Banks, and the circulation of Bank notes. He mentioned a law in Virginia actually prohibiting the circulation of notes payable to bearer.

3. Interference with the power of the States was no constitutional criterion of the power of Congress. If the power was not given, Congress could not exercise it; if given, they might exercise it, although it should interfere with the laws, or even the Constitution of the States.

4. If Congress could incorporate a Bank merely because the act would leave the States free to establish Banks also, any other incorporations might be made by Congress. They could incorporate companies of manufacturers, or companies for cutting canals, or even religious societies, leaving similar

incorporations by the States, like State Banks, to themselves. Congress might even establish religious teachers in every parish, and pay them out of the Treasury of the United States, leaving other teachers unmolested in their functions. These inadmissible consequences condemned the controverted principle.

The case of the Bank established by the former Congress had been cited as a precedent. This was known, he said, to have been the child of necessity. It never could be justified by the regular powers of the articles of Confederation. Congress betrayed a consciousness of this in recommending to the States to incorporate the Bank also. They did not attempt to protect the Bank notes by penalties against counterfeiters. These were reserved wholly to the authority of the States.

The second clause to be examined is that which empowers Congress to borrow money.

Is this bill to borrow money? It does not borrow a shilling. Is there any fair construction by which the bill can be deemed an exercise of the power to borrow money? The obvious meaning of the power to borrow money, is that of accepting it from, and stipulating payment to those who are able and willing to lend.

To say that the power to borrow involves a power of creating the ability, where there may be the will, to lend, is not only establishing a dangerous principle, as will be immediately shown, but is as forced a construction as to say that it involves the power of compelling the will, where there may be the ability to lend.

The third clause is that which gives the power to pass all laws necessary and proper to execute the specified powers.

Whatever meaning this clause may have, none can be admitted, that would give an unlimited discretion to Congress.

Its meaning must, according to the natural and obvious force of the terms and the context, be limited to means necessary to the end, and incident to the nature of the specified powers.

The clause is in fact merely declaratory of what would have resulted by unavoidable implication, as the appropriate, and, as it were, technical means of executing those powers. In this sense it has been explained by the friends of the Constitution, and ratified by the State Conventions.

The essential characteristic of the Government, as composed of limited and enumerated powers, would be destroyed, if, instead of direct and incidental means, any means could be used, which, in the language of the preamble to the bill, "might be conceived to be conducive to the successful conducting of the finances, or might be conceived to tend to give facility to the obtaining of loans." He urged an attention to the diffuse and ductile terms which had been found requisite to cover the stretch of power contained in the bill. He compared them with the terms necessary and proper, used in the Constitution, and asked whether it was possible to view the two descriptions as synonymous, or the one as a fair and safe commentary on the other.

If, proceeded he, Congress, by virtue of the power to borrow, can create the means of lending, and, in pursuance of these means, can incorporate a Bank, they may do any thing whatever creative of like means.

The East India Company has been a lender to the British Government, as well as the Bank, and the South Sea Company is a greater creditor than either. Congress, then, may incorporate similar companies in the United States, and that too under the idea of regulating trade, but under that of borrowing money.

Private capitals are the chief resources for loans to the British Government. Whatever then may be conceived to favor the accumulation of capitals may be done by Congress. They may incorporate manufacturers. They may give monopolies in every branch of domestic industry.

If, again, Congress by virtue of the power to borrow money, can create the ability to lend, they may, by virtue of the power to levy money, create the ability to pay it. The ability to

pay taxes depends on the general wealth of the society, and this, on the general prosperity of agriculture, manufactures, and commerce. Congress then may give bounties and make regulations on all of these objects.

The States have, it is allowed on all hands, a concurrent right to lay and collect taxes. This power is secured to them, not by its being expressly reserved, but by its not being ceded by the Constitution. The reasons for the bill cannot be admitted, because they would invalidate that right; why may it not be conceived by Congress, that a uniform and exclusive imposition of taxes, would not less than the proposed Banks "be conducive to the successful conducting of the national finances, and tend to give facility to the obtaining of revenue, for the use of the Government?"

The doctrine of implication is always a tender one. The danger of it has been felt in other Governments. The delicacy was felt in the adoption of our own; the danger may also be felt, if we do not keep close to our chartered authorities.

Mark the reasoning on which the validity of the bill depends! To borrow money is made the end, and the accumulation of capitals implied as the means. The accumulation of capitals is then the end, and a Bank implied as the means. The Bank is then the end, and a charter of incorporation, a monopoly, capital punishments, &c., implied as the means.

If implications, thus remote and thus multiplied, can be linked together, a chain may be formed that will reach every object of legislation, every object within the whole compass of political economy.

The latitude of interpretation required by the bill is condemned by the rule furnished by the Constitution itself.

Congress have power "to regulate the value of money"; yet it is expressly added, not left to be implied, that counterfeiters may be punished.

They have the power "to declare war," to which armies are more incident than incorporated banks to borrowing; yet the power "to raise and support armies" is expressly added; and

to this again, the express power "to make rules and regulations for the government of armies"; a like remark is applicable to the powers as to the navy.

The regulation and calling out of the militia are more appertinent to war than the proposed Bank to borrowing; yet the former is not left to construction.

The very power to borrow money is a less remote implication from the power of war, than an incorporated monopoly Bank from the power of borrowing; yet, the power to borrow is not left to implication.

It is not pretended that every insertion or omission in the Constitution is the effect of systematic attention. This is not the character of any human work, particularly the work of a body of men. The examples cited, with others that might be added, sufficiently inculcate, nevertheless, a rule of interpretation very different from that on which the bill rests. They condemn the exercise of any power, particularly a great and important power, which is not evidently and necessarily involved in an express power.

It cannot be denied that the power proposed to be exercised is an important power.

As a charter of incorporation the bill creates an artificial person, previously not existing in law. It confers important civil rights and attributes, which could not otherwise be claimed. It is, though not precisely similar, at least equivalent, to the naturalization of an alien, by which certain new civil characters are acquired by him. Would Congress have had the power to naturalize, if it had not been expressly given?

In the power to make by-laws, the bill delegated a sort of Legislative power, which is unquestionably an act of a high and important nature. He took notice of the only restraint on the by-laws, that they were not to be contrary to the law and the constitution of the Bank, and asked what law was intended; if the law of the United States, the scantiness of their code would give a power never before given to a corpora-

tion, and obnoxious to the States, whose laws would then be superseded, not only by the laws of Congress, but by the by-laws of a corporation within their own jurisdiction. If the law intended was the law of the State, then the State might make laws that would destroy an institution of the United States.

The bill gives a power to purchase and hold lands; Congress themselves could not purchase lands within a State "without the consent of its Legislature." How could they delegate a power to others which they did not possess themselves?

It takes from our successors, who have equal rights with ourselves, and with the aid of experience will be more capable of deciding on the subject, an opportunity of exercising that right for an immoderate term.

It takes from our constituents the opportunity of deliberating on the untried measure, although their hands are also to be tied by it for the same term.

It involves a monopoly, which affects the equal rights of every citizen.

It leads to a penal regulation, perhaps capital punishments, one of the most solemn acts of sovereign authority.

From this view of the power of incorporation exercised in the bill, it could never be deemed an accessory or subaltern power, to be deduced by implication, as a means of executing another power; it was in its nature a distinct, an independent and substantive prerogative, which not being enumerated in the Constitution, could never have been meant to be included in it, and not being included, could never be rightfully exercised.

He here adverted to a distinction, which he said had not been sufficiently kept in view, between a power necessary and proper for the Government or Union, and a power necessary and proper for executing the enumerated powers. In the latter case, the powers included in the enumerated powers were not expressed, but to be drawn from the nature of each.

In the former, the powers composing the Government were expressly enumerated. This constituted the peculiar nature of the Government; no power, therefore, not enumerated could be inferred from the general nature of Government. Had the power of making treaties, for example, been omitted, however necessary it might have been, the defect could only have been lamented, or supplied by an amendment of the Constitution.

But the proposed Bank could not even be called necessary to the Government; at most it could be but convenient. Its uses to the Government could be supplied by keeping the taxes a little in advance; by loans from individuals; by the other Banks, over which the Government would have equal command; nay greater, as it might grant or refuse to these the privilege (a free and irrevocable gift to the proposed Bank) of using their notes in the Federal revenue.

He proceeded next to the contemporary expositions given to the Constitution.

The defence against the charge founded on the want of a bill of rights pre-supposed, he said, that the powers not given were retained; and that those given were not to be extended by remote implications. On any other supposition, the power of Congress to abridge the freedom of the press, or the rights of conscience, &c., could not have been disproved.

The explanations in the State Conventions all turned on the same fundamental principle, and on the principle that the terms necessary and proper gave no additional powers to those enumerated.

[Here he read sundry passages from the Debates of the Pennsylvania, Virginia, and North Carolina Conventions, showing the grounds on which the Constitution had been vindicated by its principal advocates, against a dangerous latitude of its powers, charged on it by its opponents.]

He did not undertake to vouch for the accuracy or authenticity of the publications which he quoted. He thought it probable that the sentiments delivered might, in many in-

stances, have been mistaken, or imperfectly noted; but the complexion of the whole, with what he himself and many others must recollect, fully justified the use he had made of them.

The explanatory declarations and amendments accompanying the ratifications of the several States formed a striking evidence, wearing the same complexion. He referred those who might doubt on the subject, to the several acts of ratification.

The explanatory amendments proposed by Congress themselves, at least, would be good authority with them; all these renunciations of power proceeded on a rule of construction, excluding the latitude now contended for. These explanations were the more to be respected, as they had not only been proposed by Congress, but ratified by nearly three-fourths of the States. He read several of the articles proposed, remarking particularly on the 11th and 12th; the former, as guarding against a latitude of interpretation; the latter, as excluding every source of power not within the Constitution itself.

With all this evidence of the sense in which the Constitution was understood and adopted, will it not be said, if the bill should pass, that its adoption was brought about by one set of arguments, and that it is now administered under the influence of another set? and this reproach will have the keener sting, because it is applicable to so many individuals concerned in both the adoption and administration.

In fine, if the power were in the Constitution, the immediate exercise of it cannot be essential; if not there, the exercise of it involves the guilt of usurpation, and establishes a precedent of interpretation levelling all the barriers which limit the powers of the General Government, and protect those of the State Governments. If the point be doubtful only, respect for ourselves, who ought to shun the appearance of precipitancy and ambition; respect for our successors, who ought not lightly to be deprived of the opportunity of exercising the rights of legislation; respect for our constituents who have

had no opportunity of making known their sentiments, and who are themselves to be bound down to the measure for so long a period; all these considerations require that the irrevocable decision should at least be suspended until another session.

It appeared on the whole, he concluded, that the power exercised by the bill was condemned by the silence of the Constitution; was condemned by the rule of interpretation arising out of the Constitution; was condemned by its tendency to destroy the main characteristic of the Constitution; was condemned by the expositions of the friends of the Constitution, whilst depending before the public; was condemned by the apparent intention of the parties which ratified the Constitution; was condemned by the explanatory amendments proposed by Congress themselves to the Constitution; and he hoped it would receive its final condemnation by the vote of this House.

FEBRUARY 8.—BANK OF THE UNITED STATES.

Mr. MADISON observed, that the present is a question which ought to be conducted with moderation and candor; and, therefore, there is no occasion to have recourse to those tragic representations which have been adduced. Warmth and passion should be excluded from the discussion of a subject which ought to depend on the cool dictates of reason for its decision.

Adverting to the observation of Mr. SMITH, of South Carolina, "that it would be a deplorable thing for the Senate of the United States to have fallen on a decision which violates the Constitution," he inquired, What does the reasoning of the gentleman tend to show but this, that from respect to the Senate this House ought to sanction their decisions? And from hence it will follow, that the President of the United States ought, out of respect to both, to sanction their joint proceedings; but he could remind the gentleman of his holding different sentiments on another occasion.

Mr. M. then enlarged on the exact balance or equipoise contemplated by the Constitution, to be observed and maintained between the several branches of Government; and showed, that except this idea was preserved, the advantages of different independent branches would be lost, and their separate deliberations and determinations be entirely useless.

In describing a corporation, he observed, that the powers proposed to be given are such as do not exist antecedent to the existence of the corporation; these powers are very extensive in their nature, and to which a principle of perpetuity may be annexed.

He waived a reply to Mr. VINING's observations on the common law, [in which that gentleman had been lengthy and minute, in order to invalidate Mr. MADISON's objections to the power proposed to be given to the Bank, to make rules and regulations, not contrary to law.] Mr. M. said, the question would involve a very lengthy discussion; and other objects more intimately connected with the subject remained to be considered.

The power of granting charters, he observed, is a great and important power, and ought not to be exercised unless we find ourselves expressly authorized to grant them. Here he dilated on the great and extensive influence that incorporated societies had on public affairs in Europe. They are powerful machines, which have always been found competent to effect objects on principles in a great measure independent of the people.

He argued against the influence of the precedent to be established by the bill; for though it has been said, that the charter is to be granted only for a term of years, yet he contended, that granting the powers on any principle is granting them in *perpetuum;* and assuming this right on the part of the Government involves the assumption of every power whatever.

Noticing the arguments in favor of the bill, he said, it had been observed, that "Government necessarily possesses every

power." However true this idea may be in the theory, he denied that it applied to the Government of the United States.

Here he read the restrictive clause in the Constitution; and then observed, that he saw no pass over this limit.

The preamble to the Constitution, said he, has produced a new mine of power; but this is the first instance he had heard of, in which the preamble has been adduced for such a purpose. In his opinion, the preamble only states the objects of the Confederation, and the subsequent clauses designate the express powers by which those objects are to be obtained; and a mean is proposed through which to acquire those that may be found still requisite, more fully to effect the purposes of the Confederation.

It is said, "there is a field of legislation yet unexplored." He had often heard this language; but he confessed he did not understand it. Is there a single blade of grass—is there any property in existence in the United States, which is not subject of legislation, either of the particular States, or of the United States? He contended that the exercise of this power, on the part of the United States, involves, to all intents and purposes, every power which an individual State may exercise. On this principle, he denied the right of Congress to make use of a bank to facilitate the collection of taxes. He did not, however, admit the idea, that the institution would conduce to that object. The bank notes are to be equal to gold and silver, and consequently will be as difficult to obtain as the specie. By means of the objects of trade on which gold and silver are employed, there will be an influx of those articles: but paper being substituted, will fill those channels which would otherwise be occupied by the precious metals. This, experience shows, is the uniform effect of such a substitution.

The right of Congress to regulate trade is adduced as an argument in favor of this of creating a corporation; but what has this bill to do with trade? Would any plain man suppose that this bill had any thing to do with trade?

He noticed the observation respecting the utility of banks to aid the Government with loans. He denied the necessity of the institution to aid the Government in this respect. Great Britain, he observed, did not depend on such institutions; she borrows from various sources.

Banks, it is said, are necessary to pay the interest of the public debt. Then they ought to be established in the places where that interest is paid; but can any man say, that the bank notes will circulate at par in Georgia. From the example in Scotland, we know that they cannot be made equal to specie, remote from the place where they can be immediately converted into coin; they must depreciate in case of a demand for specie; and if there is no moral certainty that the interest can be paid by these bank bills, will the Government be justified in depriving itself of the power of establishing banks in different parts of the Union?

We reason, and often with advantage, from British models; but in the present instance there is a great dissimilarity of circumstances. The bank notes of Great Britain do not circulate universally. To make the circumstances parallel, it ought to have been assumed as a fact, that banks are established in various parts of Great Britain, at which the interest of the national debt is paid; but the fact is, it is only paid in one place.

The clause of the Constitution which has been so often recurred to, and which empowers Congress to dispose of its property, he supposed referred only to the property left at the conclusion of the war, and has no reference to the moneyed property of the United States.

The clause which empowers Congress to pass all laws necessary, &c., has been brought forward repeatedly by the advocates of the bill; he noticed the several constructions of this clause which had been offered. The conclusion which he drew from the commentary of the gentleman from Massachusetts (Mr. GERRY,) was, that Congress may do what they please; and recurring to the opinion of that gentleman in

1787, he said the powers of the Constitution were then dark, inexplicable, and dangerous; but now, perhaps, as the result of experience, they are clear and luminous!

The constructions of the Constitution, he asserted, which have been maintained on this occasion, go to the subversion of every power whatever in the several States; but we are told, for our comfort, that the Judges will rectify our mistakes. How are the Judges to determine in the case; are they to be guided in their decisions by the rules of expediency?

It has been asked, that if those minute powers of the Constitution were thought to be necessary, is it supposable that the great and important power on the table was not intended to be given? Mr. M. interpreted this circumstance in a quite different way, viz: if it was thought necessary to specify in the Constitution those minute powers, it would follow that more important powers would have been explicitly granted had they been contemplated.

The Western Territory business, he observed, was a case *sui generis*, and therefore cannot be cited with propriety. West Point, so often mentioned, he said, was purchased by the United States, pursuant to law, and the consent of the State of New York is supposed, if it has not been expressly granted; but, on any occasion, does it follow that one violation of the Constitution is to be justified by another?

The permanent residence bill, he conceived, was entirely irrelative to the subject; but he conceived it might be justified on truly constitutional principles.

The act vesting in the President of the United States the power of removability has been quoted; he recapitulated, in a few words, his reasons for being in favor of that bill.

The Bank of North America he had opposed, as he considered the institution as a violation of the Confederation. The State of Massachusetts, he recollected, voted with him on that occasion. The Bank of North America was, however, the child of necessity; as soon as the war was over, it ceased to operate as to Continental purposes. But, asked he, are

precedents in war to justify violations of private and State rights in a time of peace? And did the United States pass laws to punish the counterfeiting the notes of that bank? They did not, being convinced of the invalidity of any such law; the bank, therefore, took shelter under the authority of the State.

The energetic administration of this Government is said to be connected with this institution. Mr. M. here stated the principles on which he conceived this Government ought to be administered; and added, other gentlemen may have had other ideas on the subject, and may have consented to the ratification of the Constitution on different principles and expectations; but he considered the enlightened opinion and affection of the people the only solid basis for the support of this Government.

Mr. M. then stated his objections to the several parts of the bill. The first article he objected to was the duration. A period of twenty years was, to this country, as a period of a century in the history of other countries; there was no calculating for the events which might take place. He urged the ill policy of granting so long a term, from the experience of the Government in respect to some treaties, which, though found inconvenient, could not now be altered.

The different classes of the public creditors, he observed, were not all put on an equal footing by this bill; but in the bill for the disposal of the Western Territory this had been thought essential. The holders of six per cent. securities will derive undue advantages. Creditors at a distance, and the holders of three per cent. securities, ought to be considered, as the public good is most essentially promoted by an equal attention to the interest of all.

I admit, said he, that the Government ought to consider itself as the trustee of the public on this occasion, and therefore should avail itself of the best disposition of the public property.

In this view of the subject, he objected to the bill, as the

public, he thought, ought to derive greater advantages from the institution than those proposed. In case of a universal circulation of the notes of the proposed bank, the profits will be so great that the Government ought to receive a very considerable sum for granting the charter.

There are other defects in the bill, which render it proper and necessary, in my opinion, that it should undergo a revision and amendment before it passes into a law. The power vested by the bill in the Executive to borrow of the bank, he thought was objectionable; and the right to establish subordinate banks ought not to be delegated to any set of men under Heaven.

The public opinion has been mentioned. If the appeal to the public opinion is suggested with sincerity, we ought to let our constituents have an opportunity to form an opinion on the subject.

He concluded by saying, he should move for the previous question.[1]

[1] It was decided against him by a vote of 39 to 20.

TO EDMUND PENDLETON

PHILAD[a], Feb[y] 13, 1791

DEAR SIR

Since the receipt of your favor of the 15th Jan[y], I have had the further pleasure of seeing your valuable observations on the Bank, more at length, in your communications to Mr. White. The subject has been decided, contrary to your opinion, as well my own, by large majorities in both Houses, and is now before the President.[1] The

[1] Washington debated seriously whether to sign or veto the bill, and at his request Madison prepared the following veto message for him:

Feb[y] 21. 1791. Copy of a paper made out & sent to the President at his request to be ready in case his judgment should finally decide ag[st] the Bill for incorporating a National Bank, the bill being then before him.

GENTLEMEN OF THE SENATE

Having carefully examined and maturely considered the Bill entitled "An Act

I am compelled by the conviction of my judgment and the duty of my

POPULATION AND EMIGRATION.[1]

Both in the vegetable and animal kingdoms, every species derives from nature, a reproductive faculty beyond the demand for merely keeping up its stock: the seed of a single

[1] From Freneau's *National Gazette*, vol. i., November 21, 1791. The first number of the *Gazette* appeared October 31, 1791. See also Madison to Jefferson, *ante*, ii., 246.

power of incorporating cannot by any process of safe reasoning, be drawn within the meaning of the Constitution as an appurtenance of any express power, and it is not pretended that it is itself an express power. The arguments in favor of the measure, rather increased my dislike to it because they were founded on remote implications, which strike at the very essence of the Gov[t] as composed of limited &

Station to return the Bill to the House in which it originated with the following objections:

(if to the Constitutionality)

I object to the Bill because it is an essential principle of the Government that powers not delegated by the Constitution cannot be rightfully exercised; because the power proposed by the Bill to be exercised is not expressly delegated; and because I cannot satisfy myself that it results from any express power by fair and safe rules of implication.

(if to the merits alone or in addition)

I object to the Bill because it appears to be unequal between the public and the Institution in favor of the institution; imposing no conditions on the latter equivalent to the stipulations assumed by the former. [quer. if this lie within the intimation of the President]

I object to the Bill because it is in all cases the duty of the Government to dispense its benefits to individuals with as impartial a hand as the public interest will permit; and the Bill is in this respect unequal to individuals holding different denominations of public Stock and willing to become subscribers. This objection lies with particular force against the early day appointed for opening subscriptions, which if these should be filled as quickly as may happen, amounts to an exclusion of those remote from the Government, in favor of those near enough to take advantage of the opportunity.—From the *Chamberlain MSS.* in the Boston Public Library.

Jefferson and Edmund Randolph in the cabinet advised the vetoing of the bill, but Hamilton's advice prevailed and Washington signed it February 25, 1791.

plant is sufficient to multiply it one hundred or a thousandfold. The animal offspring is never limited to the number of its parents.[1]

[1] The multiplying power in some instances, animal as well as vegetable, is astonishing. An animal plant of two seeds produces in 20 years, 1,048,576; and there are plants which bear more than 40,000 seeds. The roe of a codfish is said to contain a million of eggs; mites will supply a thousand in a day; and there are viviparous flies which produce 2000 at once. See Stillingfleet and Bradley's philosophical account of nature.

enumerated powers. The Plan is moreover liable to a variety of other objections which you have so judiciously developed.

The Excise is not yet returned by the Senate. It has undergone sundry alterations in that House, but none that affect its principle or will affect its passage. In many respects it is displeasing to me, and a greater evil than a direct tax. But the latter w^d not be listened to in Cong^s and w^d perhaps be not less offensive to the ears of the people at large, particularly in the Eastern part of the Union. The Bill contains, as you would wish, an optional clause permitting the owners of Country stills to pay the tax on their capacity, or to keep an acc^t of the liquors actually distilled, and pay according to that & no more.

The Bill for admitting Kentucky has passed into a law, and another for extending the privileges to Vermont who is knocking at the door for it, has come from the Senate and will not be opposed in the House of Rep^s. The Bill for selling the Public lands, has made some progress & I hope will go through. The fate of the Militia & several other important Bills is problematical at the present Session which will expire on the 4th of next month.

With the sincerest affection I am Dear Sir, mo: respectfully yours.

The inclosed paper I observe has a sketch of some of the arg^ts ag^st the Bank. They are extremely mutilated, and in some instances perverted, but will give an idea of the turn which the question took.

TO AMBROSE MADISON.[1]

PHILAD^a March 2^d, 1791

DEAR BROTHER

Tomorrow will put an end to our existence. Much of the business has been laid over to the next session which is to be held the 4^th Monday in Oc^r. The most important bill lately past is that for establishing a Bank. You will see in the inclosed gazetteer the ground on which it

[1] Copy kindly contributed by W. W. Scott, Esquire, of Orange Co., lately State Librarian of Virginia.

This ordinance of nature is calculated, in both instances, for a double purpose. In both it insures the life of the species, which, if the generative principle had not a multiplying

was attacked & defended. The bill remained with the President to the last moment allowed him, and was then signed by him. Since the passage of that Bill one has passed for taking Alex[a] into the district for the seat of Gov't if the Presid[t] finds it convenient. This is a confirmation of that measure & passed by a very large majority.

I enclose the report of the Sec[y] at War on Col: Taylor's case which you will hand to him. The grounds on which the claim is objected to are stated. The Report has not been decided on by Cong[s]; and having but very lately been made lies over to another session. I can not yet fix on the time of my setting out for Virg[a]. I shall at least wait till the Roads are safer than at present & am not sure that I may not make a trip into New England before I return. I have often projected this gratification to my curiosity, and do not foresee a more convenient opportunity, especially if I should be able to form a party for the purpose. I shall write you again before I make any definite arrangements. Remember me affectly to all.

I have recd yours of the 20th Feby from Falmouth. The young lady you mention has I find connections of the best sort in this place.

TO AMBROSE MADISON.[1]

PHILAD[a] April 11, 1791

DEAR BROTHER

I herewith inclose by a conveyance to Fredericksburg three pamphlets as requested by my father, the other by yourself: to which is added a list of the seeds &c sent lately to Mr Maury, according to the information contained in my last. I have not heard from you in answer to my letter on the subject of Tobacco. I have informed Mr Maury of my request to you to forward a few of the Hhds to this place, and have requested him to ship the rest as usual to his broker in Liverpool. I shall set out at a pretty early day from this place, and shall in company with Mr. Jefferson go at least as far northwardly as Lake George, with which route I shall be able to make some private business partly my own, and partly that of a friend coincide. Whether I shall afterwards extend my route Eastwardly I do not yet decide. I have not yet made any purchase of sugar or coffee as desired by my father. Both articles have fallen, the former is however still high, the latter is tolerably cheap. I shall look at some from the Isle of

[1] Copy kindly contributed by W. W. Scott, Esquire, of Orange Co., lately State Librarian of Virginia.

energy, would be reduced in number by every premature destruction of individuals, and by degrees would be extinguished altogether. In the vegetable species, the surplus answers,

France today or tomorrow, and shall probably before I leave this provide a supply of that article for the family to whom be so good as to remember me affecly.

TO THOMAS JEFFERSON.

N. York May 1. 1791.

Dear Sir

Finding on my arrival at Princeton that both Doct Witherspoon & Smith had made excursions on the vacation, I had no motive to detain me there; and accordingly pursuing my journey I arrived here the day after I left Philad^a my first object was to see Dorhman. He continues to wear the face of honesty, and to profess much anxiety to discharge the claims of Mazzei; but acknowledges that all his moveable property has been brought under such fetters by late misfortunes that no part of it can be applied to that use. His chief resource consisted of money in London which has been attached, improperly as he says, by his brother. This calamity brought on him a protest of his bills, and this a necessity of making a compromise founded on a hypothecation of his effects. His present reliance is on an arrangement which appeals to the friendship of his brother, and which he supposes his brother will not decline when recovered from the misapprehensions which led him to lay his hands on the property in London. A favorable turn of fortune may perhaps open a prospect of immediate aid to Mazzei, but as far as I can penetrate, he ought to count but little on any other resource than the ultimate security of the Western township. I expect to have further explanations however from Dorhman, and may then be better able to judge. I have seen Freneau and given him a line to you.[1] He sets out for Phila^da today or tomorrow, though it is not improbable that he may halt in N. Jersey. He is in the habit I find of translating the *Leyden Gazette* and consequently must be fully equal to the task you had allotted for him. He had supposed that besides this degree of skill, it might be expected that he should be able to translate with equal propriety into

[1] In the summer of 1791 Freneau announced his purpose of starting a paper in New Jersey, and Madison and Henry Lee induced him to come to Philadelphia instead. Jefferson appointed him a translator of French in the State Department at a salary of $250 a year, and October 31, 1791, *The National Gazette* appeared. See *Life of Madison* (Hunt), 235, *et seq.*

moreover, the essential purpose of sustaining the herbivorous tribes of animals; as in the animal, the surplus serves the like purpose of sustenance to the carnivorous tribes. A crop of

French; and under this idea, his delicacy had taken an insuperable objection to the undertaking. Being now set right as to this particular, and being made sensible of the advantages of Philad[a] over N. Jersey for his private undertaking, his mind is taking another turn; and if the scantiness of his capital should not be a bar, I think he will establish himself in the former. At all events he will give his friends then an opportunity of aiding his decision by their information & counsel. The more I learn of his character talents and principles, the more I should regret his burying himself in the obscurity he had chosen in N. Jersey. It is certain that there is not to be found in the whole catalogue of American Printers, a single name that can approach towards a rivalship.

I send you herewith a copy of Priestley's answer to Burke which has been reprinted here. You will see by a note page 56 how your idea of limiting the right to bind posterity is germinating under the extravagant doctrines of Burke on that subject. Paine's answer has not yet been rec[d] here. The moment it can be got Freneau tells me it will be published in Childs' paper.[1] It is said that the pamphlet has been suppressed in England, and that the Author withdrew to France before or immediately after its appearance. This may account for his not sending copies to his friends in this Country.

From conversations which I have casually heard, it appears that among the enormities produced by the spirit of speculation & fraud, a practice is spreading of taking out administration on the effects of deceased soldiers and other claimants leaving no representatives. By this knavery if not prevented a prodigious sum will be unsaved by the Public, and reward the worst of its Citizens. A number of adventurers are already engaged in the pursuit, and as they easily get security as Administrators and as easily get a Commission on the usual suggestion of being creditors, they desire nothing more than to ascertain the name of the party deceased or missing, trusting to the improbability of their being detected or prosecuted by the public. It cannot but have happened & is indeed a fact well understood that the unclaimed dues from the U. S. are of very great amount. What a door is here open, for collusion also if any of the Clerks in the Acc[t] offices are not proof against the temptation!

We understood in Philad[a] that during the suspension of the Bank Bill in the hands of the President, its partizans here indulged themselves

[1] *The Daily Advertiser.* See Madison's next letter to Jefferson.

wheat may be reproduced by one tenth of itself. The remaining nine tenths can be spared for the animals which feed on it. A flock of sheep may be continued by a certain proportion of its annual increase. The residue is the bounty of nature to the animals which prey on that species.

Man who preys both on the vegetable and animal species, is himself a prey to neither. He too possesses the reproductive principle far beyond the degree requisite for the bare continuance of his species.—What becomes of the surplus of human life to which this principle is competent?

It is either, 1st destroyed by infanticide, as among the Chinese and Lacedemonians; or 2d. it is stifled or starved, as

in reflections not very decent. I have reason to believe that the licentiousness of the tongues of speculators & Tories far exceeded anything that was conceived. The meanest motives were charged on him, and the most insolent menaces held over him, if not in the open streets, under circumstances not less marking the character of the party.

In returning a visit to Mr. King yesterday, our conversation fell on the Conduct of G. B. towards the U. S., which he evidently laments as much as he disapproves. He took occasion to let me understand, that altho' he had been averse to the appearance of precipitancy in our measures, he should readily concur in them after all probability should be over of voluntary relaxations in the measures of the other party; and that the next session of Congress would present such a crisis if nothing to prevent it should intervene. He mentioned also that a young gentleman here (a son of W. Smith now Ch Justice of Canada) gives out, as information from his friends in England that no Minister will be sent to this Country until one shall have previously arrived there. What credit may be due to this person or his informers I do not know. It shews at least that the conversation and expectations which lately prevailed are dying away.

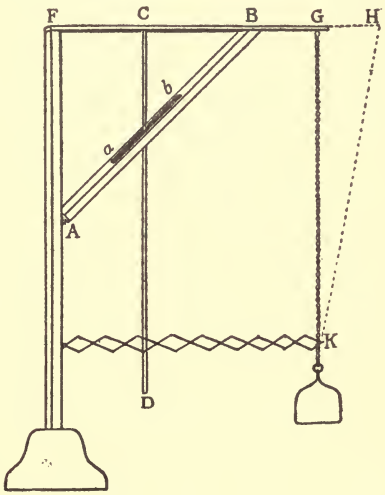
A thought has occurred on the subject of your mechanism for the table, which in my idle situation will supply me with another paragraph, if of no other use.[1] The great difficulty incident to your contrivance seemed to be that of supporting the weight of the castor without embarrassing the shortening & lengthening of the moveable radius. Might not this be avoided by suspending the castor by a chain or chord on a radius above, and requiring nothing more of

[1] Jefferson actually used a dining table made on this principle.

among other nations whose population is commensurate to its food; or 3d. it is consumed by wars and endemic diseases; or 4.th it overflows, by emigration, to places where a surplus of food is attainable.

What may be the greatest ratio of increase of which the human species is susceptible, is a problem difficult to be solved; as well because precise experiments have never been made, as because the result would vary with circumstances distinguishing different situations. It has been computed that under the most favorable circumstances possible, a given number would double itself in ten years. What has actually happened in this country is a proof, that nature would

yours than to move the swinging apparatus: thus, A. B. moveable on a shoulder at A. would be a necessary brace, and must allow C. D. to pass thro' it and play from a. to b. as the tongs are shortened or lengthened. The use of C. D. would be to connect F. G. & the tongs, so as to make them move together on the common perpendicular axis. As the distance from C to D must vary with with [sic] the protraction of the tongs, the connecting bar ought to be long accordingly, and pass through, with.t being fixed to the tongs. Its office would in that state be sufficiently performed. The objections to this plan are the height of the perpendicular axis necessary to render the motion of the castor easy, and to diminish the degree in which it w.d mount up at the end of the table. Perhaps the objection may be fatal. 2. The nicety of adjusting the friction of the tongs so as not to be inconvenient to the hand, and be sufficient to stop & hold the castor at any part of the table. In this point of view perhaps a slide on a spring would be better than the tongs. In that case C. D. might be fixed, and not moveable in the brace. By projecting F. G. to H. the castor might

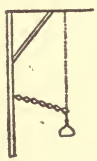


require for the purpose, a less period than twenty years. We shall be safe in averaging the surplus at five per cent.[1]

According to this computation, Great Britain and Ireland,

[1] Emigrants from Europe, enjoying freedom in a climate similar to their own, increase at a rate of five per cent. a year. Among Africans suffering or (in the language of some) enjoying slavery in a climate similar to their own, human life has been consumed in an equal ratio. Under all mitigations latterly applied in the British West-Indies, it is admitted that an annual decrease of one per cent. has taken place.—What a comment on the African Trade!

be made to swing perpendicularly not at the part of the table least distant, but at y^e^ mean distance from the Center, and the difference between its greatest & least elevation & pressure diminished. But inconveniences of another sort might be increased by this expedient. If the tongs or slide were to be placed not horizontally, but inclining



so as to lessen the effect of the pressure of the castor without being less moveable by the hand, the 2^d^ objection might be lessened. It w^d^ in that case be of less consequence to project the upper radius as proposed.

I am afraid you will hardly understand what I have attempted to describe, and I have not time if the thing deserved it, to write the letter over again for the present mail.—*Mad. MSS.*

TO THOMAS JEFFERSON.

N. York May 12, 1791.

Dear Sir

Your favor of the 9^th^ was rec^d^ last evening. To my thanks for the several inclosures I must add a request that the letter to Boynton which came in one of them may be handed to him by one of your servants. The directory will point out his habitation.

I had seen Payne's pamphlet with the preface of the Philad^a^ Editor.[2] It immediately occurred that you were brought into the Frontispiece in the manner you explain. But I had not foreseen the particular use made of it by the British partizans. Mr. Adams can least of all complain. Under a mock defence of the Republican Constitutions of his Country, he attacked them with all the force he possessed, and this in a book with his name to it whilst he was the Representative of his

[2] The *Rights of Man* was reprinted by Samuel Harrison Smith (who afterwards founded *The National Intelligencer*) with a preface containing a commendation of the work from Jefferson. See for a full treatment of the subject Conway's *Thomas Paine*, ii., 291, *et seq.*

which contain about ten millions of people, are capable of producing annually for emigration, no less than five hundred thousand; France, whose population amounts to twenty-five

Country at a foreign Court. Since he has been the 2d Magistrate in the new Republic, his pen has constantly been at work in the same cause; and tho' his name has not been prefixed to his anti republican discourses, the author has been as well known as if that formality had been observed. Surely if it be innocent & decent in one servant of the public thus to write attacks agst its Government, it cannot be very criminal or indecent in another to patronize a written defence of the principles on which that Govt is founded. The sensibility of H.[ammond][1] & B.[ond][2] for the indignity to the Brit. Constn is truly ridiculous. If offence cd be justly taken in that quarter, what would France have a right to say to Burke's pamphlet and the Countenance given to it & its author, particularly by the King himself? What in fact might not the U. S. say, whose revolution & democratic Governments come in for a large share of the scurrility lavished on those of France?

I do not foresee any objection to the route you propose. I had conversed with Beckley on a trip to Boston &c and still have that in view, but the time in view for starting from this place, will leave room for the previous excursion. Health recreation & curiosity being my objects, I can never be out of my way.[3]

Not a word of news here. My letters from Virginia say little more than those you had recd. Carrington says the returns have come in pretty thickly of late and warrant the estimate founded on the Counties named to me some time ago. As well as I recollect, these averaged upwards of 8000 souls, and were considered by him as under the general average.

Yrs affectly.—*Mad. MSS.*

TO THOMAS JEFFERSON.

NEW YORK June 23d 1791.

DEAR SIR

I received your favor of the 21st yesterday, inclosing post notes for 235 dollars. I shall obtain the bills of Mrs Elsworth[4] & the Smith this afternoon and will let you know the amount of them. There is

[1] British Minister.

[2] British Consul General.

[3] They set out May 20 and were gone till June 16.

[4] Dorothy Ellsworth, wife of Verdine Ellsworth. She kept a boarding house on Maiden Lane where Madison lived.

millions, no less than one million two hundred and fifty thousand; and all Europe, stating its numbers at one hundred and fifty millions, no less than seven and a half millions.

a bill from the Taylor amounting to £6,—7 which I shall pay. The articles for which it is due are in my hands and will be forwarded by the first opportunity. If a good one should fall within your notice, it may be well for you to double the chance of a conveyance by giving a commission for the purpose. I have applied to Rivington for the Book but the only copies in Town seem to be of the *8th Edition.* This however is advertised as "enlarged &c by the Author," who I am told by Berry & Rogers is now living & a correspondent of theirs. It is not improbable therefore that your reason for preferring the 6th Ed: may be stronger in favor of this. Let me know your pleasure on the subject & it shall be obeyed.

I am at a loss what to decide as to my trip to the Eastward. My inclination has not changed, but a journey without a companion, & in the stage which besides other inconveniences travels too rapidly for my purpose, makes me consider whether the next fall may not present a better prospect. My horse is more likely to recover than at the time of your departure. By purchasing another, in case he should get well, I might avoid the Stage, but at an expence not altogether convenient.

You have no doubt seen the French Regulations on the subject of Tobo, which commence hostilities agst the British Navigation Act. Mr. King tells me an attack on Payne has appeared in a Boston paper under the name of Publicola,[1] and has an affinity in the stile as well as sentiments to the discourses on Davila. I observed in a late paper here an extract from a Philada pamphlet on the Bank. If the publication has attracted or deserves notice I should be glad of a copy from you. I will write again in a few days, in the mean time remaining,

Yrs mo: affecly.—*Mad. MSS.*

TO THOMAS JEFFERSON.

New York June 27, 1791.

Dear Sir

By a Capt: Simms who setts off this afternoon in the Stage for Philadelphia I forward the Bundle of Cloaths from the Taylor. His bill is inclosed with that of Mrs Elseworth including the payment to the Smith.

I have seen Col: Smith more than once. He would have opened his

[1] The papers were really by John Quincy Adams. See *post*, Madison's letter of July 13 to Jefferson.

It is not meant that such a surplus could, under any revolution of circumstances, suddenly take place: yet no reason occurs why an annual supply of human, as well as other animal

budget fully to me, but I declined giving him the trouble. He has written to the President a statement of all his conversations with y^e^ British Ministry, which will get into your hands of course. He mentioned to me his wish to have them put there in the first instance and your situation on his arrival as an apology for not doing it. From the complexion of the little anecdotes & observations which dropped from him in our interviews I suspect that report has as usual far overrated the importance of what has been confided to him. General professions which mean nothing, and the sending a Minister which can be suspended at pleasure, or which if executed may produce nothing, are the amount of my present guesses.

Mr. Adams seems to be getting faster & faster into difficulties. His attack on Payne, which I have not seen, will draw the public attention to his obnoxious principles, more than everything he has published. Besides this, I observe in M^c^Lean's paper here, a long extract from a sensible letter republished from Poughkeepsie, which gives a very unpopular form to his anti-republican doctrines, and presents a strong contrast of them with a quotation from his letter to Mr. Wythe in 1776.

I am still resting on my oars with respect to Boston. My Horse has had a relapse which made his recovery very improbable. Another favorable turn has taken place, and his present appearance promises tolerably well. But it will be some time before he can be used, if he should suffer no other check. Adieu —*Mad. MSS.*

Yrs

TO JAMES MADISON.

N. York July 2^d^ 1791

Hon^d^ Sir

Your favor of the 29^th^ of May never came to hand till yesterday when it fell in with me at this place. My brother's of nearly the same date had done so a few days before. My answer to his went by the last mail. I refer to it for the information yours requests. I had indeed long before advised you both to ship to Leiper all the good Tobacco of your crops. It is certainly the best you can do with it.

The tour I lately made with M^r^ Jefferson of which I have given the outline to my brother was a very agreeable one, and carried us thro an interesting country new to us both. I postpone the details of our travels till I get home which as I mentioned to my brother will be in Aug^st^ I cannot yet say whether it will be towards the middle or last

life, to any amount not exceeding the multiplying faculty, would not be produced in one country, by a regular and commensurate demand of another. Nor is it meant that if such a redundancy of population were to happen in any particular

of the month. It gives me much satisfaction to learn that my mother has so far recovered. I hope her health may continue to mend. You do not mention whether she has been or is to be at any of the Springs—I shall attend to the articles you wish for family use on my way thro' Philad[a] unless I should meet with them on satisfactory terms here.

The Report in Georgia relating to me is as absolute a falsehood as ever was propagated. So far am I from being concerned in the Yazoo transaction, that from the nature of it, as it has been understood by me, I have invariably considered it as one of the most disgraceful events that have appeared in our public counsels, and such is the opinion which I have ever expressed of it. I do not think it necessary to write to Gen[l] Mathews, because a report of such a nature does not seem to merit a formal contradiction. I wish him to know however that I am sensible of his friendly attention, and will thank M[r] Taylor, when an opportunity offers, to let him know as much.

The latest accounts from abroad are various & contradictory. The most authentic make it probable that there will be no war between England & Russia, and that there will be peace between the latter & the Turks at the expence of the Turks. From a concurrence of information it is probable also that a public minister from G. B. may pretty soon be expected. If He brings powers & dispositions to form proper commercial arrangements, it will be an interesting change in the councils of that nation; especially as an execution of the Treaty of peace must be a preliminary in the business.

The Crops in general thro' the Country I have passed & heard from are promising. Wheat is selling at Phil[a] at ab[t] a dollar a bushel & here in the usual proportion.

Remember me affect[ly] to all. & accept the dutiful respects of your son.—*Mad. MSS.*

TO THOMAS JEFFERSON.

N. York July 10, 1791

Dear Sir,

Your favor of the 6[th] came to hand on friday. I went yesterday to the person who advertised the Maple Sugar for the purpose of executing your commission on that subject. He tells me that the cargo is not yet arrived from Albany, but is every hour expected; that it will not be sold in parcels of less than 15 or 16 hundred lbs & only at

country, an influx of it beyond a certain degree ought to be desired by any other, though within that degree, it ought to be invited by a country greatly deficient in its population. The calculation may serve, nevertheless, by placing an

auction, but that the purchasers will of course deal it out in smaller quantities; that a part is grained and a part not; and that the price of the former will probably be regulated by that of good Muscavado which sells at about £5 N. Y. Currency a Ct. I shall probably be at Flushing in two or three days and have an opportunity of executing your other Comissions on the spot. In case of disappointment, I shall send the Letter & money to Prince by the best conveyance to be had. The Maple Seed is not arrived. The Birch Bark has been in my hands some days and will be forwarded as you suggested.

The Bank shares have risen as much in the Market here as at Philadelphia. It seems admitted on all hands now that the plan of the institution gives a moral certainty of gain to the Subscribers with scarce a physical possibility of loss. The subscriptions are consequently a mere scramble for so much public plunder which will be engrossed by those already loaded with the spoils of individuals. The event shews what would have been the operation of the plan, if, as *originally proposed* subscriptions had been limited to the 1st of april and to the favorite species of stock which the Bank Jobbers had monopolized. It pretty clearly appears also in what proportions the public debt lies in the Country. What sort of hands hold it, and by whom the people of the U. S. are to be governed. Of all the shameful circumstances of this business, it is among the greatest to see the members of the Legislature who were most active in pushing this Job openly grasping its emoluments. Schuyler is to be put at the Head of the Directors, if the weight of the N. Y. subscribers can effect it. Nothing new is talked of here. In fact stock-jobbing drowns every other subject. The Coffee-House is in an eternal buzz with the Gamblers.

I have just understood that Freneau is now here & has abandoned his Philad[a] project. From what cause I am wholly unable to determine; unless those who know his talents & hate his political principles should have practiced some artifice for the purpose.

I have given up for this season my trip Eastward. My bilious situation absolutely forbade it. Several lesser considerations also conspired with that objection. I am at present free from a fever but have sufficient evidence, in other shapes that I must adhere to my defensive precautions.

The pamphlet on Weights &c, was put into my hands by Doc[r] Kemp

important principle in striking view, to prepare the way for the following positions and remarks.

First. Every country, whose population is full, may annually spare a proportion of its inhabitants, like a hive of bees

with a view to be forwarded after perusal to you. As I understand it is a duplicate and to be kept by you. Always & mo: affec^{ly}
Y^{rs} —*Mad. MSS.*

TO THOMAS JEFFERSON.

N. York July 13, 1791

Dear Sir

I received last evening your very kind enquiries after my health. My last will have informed you of the state of it then. I continue to be incommoded by several different shapes of the bile; but not in a degree that can now be called serious. If the present excessive heat should not augment the energy of the cause, I consider myself as in a good way to get rid soon of its effects.

Beckley has just got back from his Eastern trip. He says that the partizans of Mr. Adam's heresies in that quarter are perfectly insignificant in point of number. that particularly in Boston he is become distinguished for his unpopularlity. that Publicola is probably the manufacture of his son out of materials furnished by himself, and that the publication is generally as obnoxious in New England as it appears to be in Pennsylvania. If young adams be capable of giving the dress in which publicola presents himself, it is very probable he may have been made the Editor of his Father's doctrines. I hardly think the Printer would so directly disavow the fact if Mr. Adams was himself the writer. There is more of method also in the arguments, and much less of clumsiness & heaviness in the style, than characterize his writings. I mentioned to you some time ago an extract from a piece in the Poughkeepsie paper as a sensible comment on Mr. Adams' doctrines. The whole has since been republished here, and is evidently from a better pen than any of the Anti-publicolas I have seen. In Greenleaf's paper of to-day is a second letter from the same quarter, which confirms the character I have given of the Author.

We understand here that 800 shares in the Bank, committed by this City to Mr. Constable, have been excluded by the manner in which the business was conducted. that a considerable number from Boston met with the same fate. and that Baltimore has been kept out in toto. It is all charged on the manœuvres of Philad^{a} which is said to have secured a majority of the whole to herself. The disappointed individuals are clamorous of course, and the language of the place marks a general indignation on the subject. If it should turn

its swarm, without any diminution of its number: nay a certain proportion must, necessarily, be either spared, or destroyed, or kept out of existence.[1]

[1] The most remarkable instances of swarms of people that have been spared without diminishing the parent stock, are the colonies and colonies of colonies among the antient Greeks. Milentum, which was itself a colony, is reported by Pliny, to have established no less than eighty colonies, on the Hellespont, the Propontis, and the Euxine. Other facts of a like kind are to be found among the Greek historians.

out that the cards were packed for the purpose of securing the game to Philad[a] or even that more than half the Institution and of course the whole direction of it, have fallen into the hands of that City, some who have been loudest in their plaudits whilst they expected to share in the plunder, will be equally so in sounding the injustice of monopoly, and the danger of undue influence on the Government.

The Packet is not yet arrived. By a vessel arrived yesterday Newspapers are rec[d] from London which are said to be later than any yet come to hand. I do not find that any particular facts of moment are handed out. The miscellaneous articles come to me thro' Childs' paper, which you get sooner than I could rehearse to you. It has been said here by the Anglicans that the President's message to Cong[s] on the subject of the commercial disposition of G. B. has been asserted openly by Mr. Pitt to be misrepresentation. and as it would naturally be traced to Gov[r] Morris it has been suggested that he fell into the hands of the Chev[r] Luzerne who had the dexterity to play off his negotiations for French purposes. I have reason to believe that B[eckwith] has had a hand in throwing these things into circulation. I wish you success with all my heart in your efforts for Payne.[1] Besides the advantage to him which he deserves, an appointment for him, at this moment would do public good in various ways.

Payne

Always & truly yours.—*Mad. MSS.*

TO THOMAS JEFFERSON.

N. York Aug 4. 1791

My Dear Sir

It being probable that I shall leave this place early in the ensuing week I drop you an intimation of it, that you may keep back my letters that may fall into your hands for me, or that you might intend to favor me with.

The outward bound Packet for Halifax & London sailed today. The

[1] Mr. Conway says Jefferson and Randolph endeavored to secure a place in the cabinet for Paine.—Conway's *Thomas Paine*, i., 299.

Secondly. It follows, moreover, from this multiplying faculty of human nature, that a nation, sparing or losing more than its proper surplus, the level must soon be restored by the internal resources of life.

one expected for some time past is not yet arrived, and I do not learn that any foreign news is rec^{d} thro any other channel. Stock & scrip continue to be the sole domestic subjects of conversation. The former has mounted in the late sales above par, from which a superficial inference would be drawn that the rate of interest had fallen below 6 Per C^{t}. It is a fact however which explains the nature of these speculations, that they are carried on with money borrowed at from 2½ Per C^{t}. a month, to 1 Per C^{t} a week.

Adieu Y^{rs} mo: affec^{ly}.—*Mad. MSS.*

TO THOMAS JEFFERSON.

N. York Aug: 8 1791.

My dear Sir

I take the liberty of putting the inclosed into your hands that in case Col: Lee should have left Philad^{a} the contents may find their way to Col: Fisher who is most interested in them. And I leave it open for the same purpose. The Attorney will be a fit channel in the event of Col: Lee's departure, for conveying the information.

You will find an allusion to some mysterious cause for a phenomenon in Stocks. It is surmised that the deferred debt is to be taken up at the next session, and some anticipated provision made for it. This may either be an invention of those who wish to sell, or it may be a reality imparted in confidence to the purchasers or smelt out by their sagacity. I have had a hint that something is intended and has dropt from ——— ———[1] which has led to this speculation. I am unwilling to credit the fact, untill I have further evidence, which I am in a train of getting if it exists. It is said that packet boats & expresses are again sent from this place to the Southern States, to buy up the paper of all sorts which has risen in the market here. These & other abuses make it a problem whether the system of the old paper under a bad Government, or of the new under a good one, be chargeable with the greater substantial injustice. The true difference seems to be that by the former the few were the victims to the many; by the latter the many to the few. It seems agreed on all hands now that the bank is a certain & gratuitous augmentation of the capitals subscribed, in a proportion of not less than 40 or 50 Per C^{t} and if the deferred debt

[1] The blanks are so in the original. Perhaps he referred to Hamilton.

Thirdly. Emigrations may augment the population of the country permitting them. The commercial nations of Europe, parting with emigrants, to America, are examples. The articles of consumption demanded from the former, have

should be immediately provided for in favor of the purchasers of it in the deferred shape, & since the unanimous vote that no change shd be made in the funding system, my imagination will not attempt to set bounds to the daring depravity of the times. The stock-jobbers will become the pretorian band of the Government, at once its tool & its tyrant; bribed by its largesses, & overawing it by clamours & combinations. Nothing new from abroad. I shall not be in Philada till the close of the Week.

Adieu. Yrs Mo: affy —*Mad. MSS.*

TO JAMES MADISON.

PHILADA Octr 30. 1791.[1]

HOND SIR

We arrived here yesterday morning was a week, having been obliged to push through the bad weather by the discovery first made at Mount Vernon that the meeting of Congress was a week earlier than was calculated at our setting out. The President had been under the same mistake, and had but just been apprized of it. Many others had equally miscalculated.

Being obliged to attend immediately on my arrival to public busi ness I have not been able to give the attention to yours and that of others which I wished. I have however seen Mr Leiper so far as to learn from him that your Fredericksburg Tobo is in his hands, and that a shilling or two more may be expected for it than for the preceding shipment. As soon as the sale is made, and I can execute the other commissions you have given me, I will write you an account of the whole. The price of the best Sugars is I find £4—8 Virgia currency per Ct and coffee about 1 / do per ℔b.

The past week has been spent rather in preparations for the business of the present Session of Congs than in the actual commencement of it. You will find what has been done in the inclosed papers.—Mr Hammond the expected Minister from G. Britain arrived in the last packet & has been here some days. His public character has not yet been announced in form. If any communications have been made by him on the subject of his mission, they are known to the Executive Department alone. I am extremely anxious to know the state of my mothers health which was so unsettled when I left home. I am

[1] Congress met October 24.

created employment for an additional number of manufactures. The produce remitted from the latter, in the form of raw materials, has had the same effect—whilst imports and

looking out for the information by every mail. present my dutiful regards to her.—*Mad. MSS.*

TO ROBERT PLEASANTS.

PHILADA, Oct 30, 1791.

SIR

The delay in acknowledging your letter of the 6th June last proceeded from the cause you conjectured. I did not receive it till a few days ago, when it was put into my hands by Mr. James Pemberton, along with your subsequent letter of the 8th August.[1]

The petition relating to the Militia bill contains nothing that makes it improper for me to present it. I shall therefore readily comply with your desire on that subject. I am not satisfied that I am equally at liberty with respect to the other petition. Animadversions such as it contains, and which the authorized object of the petitioners did not require on the slavery existing in our country, are supposed by the holders of that species of property, to lessen the value by weakening the tenure of it. Those from whom I derive my public station are known by me to be greatly interested in that species of property, and to view the matter in that light. It would seem that I might be chargeable at least with want of candour, if not of fidelity, were I to make use of a situation in which their confidence has placed me to become a volunteer in giving a public wound, as they would deem it, to an interest on which they set so great a value. I am the less inclined to disregard this scruple, as I am not sensible that the event of the petition would in the least depend on the circumstance of its being laid before the House by this or that person.

Such an application as that to our own Assembly on which you ask

[1] Pleasants was a Quaker and wrote in behalf of "The Humane or Abolition Society" of Virginia, saying in his letter of June 6,—"believing thou [Madison] art a friend to general liberty,"—he had a strong desire to have a scheme of general emancipation in the state. "Knowing the sentiments of divers slave-holders, who are favorable to the design, I wish to have thy judgment on the propriety of a Petition to our assembly for a law declaring the children of slaves to be born after the passing such act, to be free at the usual ages of eighteen and twenty-one years; and to enjoy such privileges as may be consistent with justice and sound policy."—*Mad. MSS.* The leading minds of Virginia were in favor of emancipation. See Randall's *Jefferson*, i., 227.

The memorial against the militia bill was presented November 23.

exports of every kind, have multiplied European merchants and mariners. Where the settlers have doubled every twenty or twenty-five years, as in the United States, the increase of

my opinion, is a subject in various respects, of great delicacy and importance. The consequences of every sort ought to be well weighed by those who would hazard it. From the view under which they present themselves to me, I cannot but consider the application as likely to do harm rather than good. It may be worth your own consideration whether it might not produce successful attempts to withdraw the privilege now allowed to individuals, of giving freedom to slaves. It would at least be likely to clog it with a condition[1] that the persons freed should be removed from the Country; there being arguments of great force for such a regulation, and some would concur in it who in general disapprove of the institution of slavery.

I thank you Sir for the friendly sentiments you have expressed towards me; and am with respect and esteem

Your Obed^{t} hble Serv^{t} —*Mad. MSS*

TO JAMES MADISON.

PHILAD^{A} Nov^{r} 13. 1791.

HON^{D} SIR

I rec^{d} yesterday a letter from my brother Ambrose which gave me the first information I have had since I left home concerning the state of my mothers health. I am extremely glad to find she had so much mended and hope her health may continue to grow better.

My brother signified to me that Miss Boynton wished a furr instead of a chip hat to be sent her. Unluckily the latter had been bought, packed up, & sent off in a trunk with the other articles, before his letter got to hand. It was consequently too late to make the change. If she wishes the other hat to be procured & forwarded, no time in giving me notice is to be lost, as the progress of the winter will soon put an end to the intercourse with Virginia by water. I have provided all the articles desired by my brother except the shoes for himself, which owing to a variance between the shoemakers & their journeymen on the point of wages, could not be got. His linnen is packed up with the coffee sent you. His crate of ware, will go by itself addressed to the care of M^{r} J. Blair. The remainder of his articles are in a Trunk which contains moreover the articles for M^{rs} Mason & Fanny; except the Breast pin which has been delayed by the absence of the artist. I must take some private opp^{y} to send it to my brother W. in Richmond. The trunk is already gone, or will go in a day or two

[2] It so happened.—Note in Madison's handwriting.

products and consumption in the new country, and consequently of employment and people in the old, has had a corresponding rapidity.

Of the people of the United States, nearly three millions are of British descent.[1] The British population has notwithstanding increased within the period of our establishment. It was the opinion of the famous Sir Josiah Child, that every

[1] Irish is meant to be included.

addressed to Mr Maury. Besides the articles abovementioned, I have put into it a parcel of cloaths which I consign to the disposal of my mother—Finding that sugar was not likely to fall, I procured you a supply of that article as well as of coffee. They have both been sent off about a week ago addressed to Mr Maury, and are probably by this time in Fredericksbrg. The quantity of Sugar is 400 ℔. and of coffee 150 ℔, 50 ℔ of it being of the Bourbon sort.

The Nail rods you want are not to be got in the City, and the price of the sheet bags is 2/9 Pa curry a pound, which so far exceeds your limitation, that I declined sending it.—Mr Leiper has not yet sold your Tobo he says two Hhds are pretty good; the others very deficient in substance. He speaks favorably of the manner in which the Tobo has been handled & put up, & thinks its value would have been much greater, if it had been tapped lower. In answer to my enquiry as to stemmed Tobo he says the difference will vary from 25 to 33 per Ct. If any should be sent him he recommends care in taking out the stem, so as to tear the leaf as little as possible—your loan-office Certificates have been funded as I learn from Messrs Wister & Ashton your letter arrived in time; and according to the office construction of the law, the defect of liquidation prior to June, did not stand in the way—The six per Cts I am just told have got up to 24/. in the pound, giving credit till March. If you chuse to sell, you will let me know—as soon as I get in all the bills from those of whom I have purchased the different articles for yourself my brother A. &c., I will forward an account of the whole. Mr Freneau has sent papers to Fredg for subscribers whose names I brought with me. I must beg you to collect & send us, as soon as possible the other subscriptions in Orange—and get the same done for Culpeper.

The inclosed paper will give you a glance of what is going on in Congress who have not yet entered into the substantial parts of their business. It will also let you know all that I could add as to foreign information.

Yr affectn Son—*Mad. MSS.*

man in the British Colonies found employment, and of course, subsistence, for four persons at home. According to this estimate, as more than half a million of the adult males in the United States equally contribute employment at this time to British subjects, there must at this time be more than two millions of British subjects subsisting on the fruits of British emigrations. This result, however, seems to be beyond the real proportion. Let us attempt a less vague calculation. The value of British imports into the United States including British freight, may be stated at about fifteen millions of dollars. Deduct two millions for foreign articles coming through British hands; there remain thirteen millions. About half our exports, valued at ten millions of dollars, are remitted to that nation. From the nature of the articles, the freight cannot be less than three millions of dollars; of which about one fifth [1] being the share of the United States, there is to be added to the former remainder, two millions four hundred thousand. The profit accruing from

[1] This is stated as the fact is, not as it ought to be. The United States are reasonably entitled to half the freight, if, under regulations, perfectly reciprocal in every channel of navigation, they could acquire that share. According to Lord Sheffield, indeed, the United States are well off, compared with other nations; the tonnage employed in the trade with the whole of them, previous to the American Revolution, having belonged to British subjects, in proportion of more than eleven twelfths. In the year 1660, other nations owned about $\frac{1}{4}$; in 1700 less than $\frac{1}{8}$; in 1725 $\frac{1}{19}$; in 1750 $\frac{1}{12}$; in 1774 less than that proportion. What the proportion is now, is not known. If such has been the operation of the British navigation law on other nations, it is our duty, without enquiring into their acquiescence in its monopolizing tendency, to defend ourselves against it, by all the fair and prudent means in our power.

This is admitted to be a very vague estimate. The proportion of our exports which are either necessaries of life or have some profitable connection with manufactures might be pretty easily computed. The actual profit drawn from that proportion is a more difficult task; but if tolerably ascertained and compared with the proportion of such of our imports as are not for mere consumption would present one very interesting view of the commerce of the United States.

the articles as materials or auxiliaries for manufactures, is probably at least fifty per cent. or five millions of dollars.

The three sums make twenty millions four hundred thousand dollars, call them in round numbers twenty millions.— The expence of supporting a labouring family in Great-Britain, as computed by Sir John Sinclair, on six families containing thirty-four persons, averages £.4: 12: 10½ sterling, or about twenty dollars a head. As his families were of the poorer class, and the subsistence a bare competency, let twenty-five per cent. be added, making the expence about twenty-five dollars a head, dividing twenty millions by this sum, we have eight hundred thousand for the number of British persons whose subsistence may be traced to emigration for its source; or allowing eight shillings sterling a week, for the support of a workman, we have two hundred sixteen thousand three hundred forty-five, of that class, for the number derived from that source.

This lesson of fact, which merits the notice, of every commercial nation, may be enforced by a more general view of the subject.

The present imports of the United States, adding to the first cost, &c, one half the freight, as the reasonable share of foreign nations, may be stated at twenty-five millions of dollars. Deducting five millions on account of East-India articles, there remain in favor of Europe, twenty millions of dollars. The foreign labour incorporated with such part of our exports as are subjects or ingredients for manufactures, together with half the export freight, is probably not of less value than fifteen millions of dollars. The two sums together make thirty-five millions of dollars, capable of supporting two hundred, thirty-three thousand three hundred thirty-three families of six persons each: or three hundred seventy-eight thousand and six hundred and five men, living on eight shillings sterling a week.

The share of this benefit, which each nation is to enjoy, will be determined by many circumstances. One that must

have a certain and material influence, will be, the taste excited here for their respective products and fabrics. This influence has been felt in all its force by the commerce of Great-Britain, as the advantage originated in the emigration from that country to this; among the means of retaining it, will not be numbered a restraint on emigrations. Other nations, who have to acquire their share in our commerce, are still more interested in aiding their other efforts, by permitting, and even promoting emigrations to this country, as fast as it may be disposed to welcome them. The space left by every ten or twenty thousand emigrants will be speedily filled by a surplus of life that would otherwise be lost. The twenty thousand in their new country, calling for the manufactures and productions required by their habits, will employ and sustain ten thousand persons in their former country, as a clear addition to its stock. In twenty or twenty-five years, the number so employed and added, will be twenty thousand. And in the mean time, example and information will be diffusing the same taste among other inhabitants here, and proportionately extending employment and population there.

Fourthly. Freedom of emigration is due to the general interests of humanity. The course of emigrations being always, from places where living is more difficult, to places where it is less difficult, the happiness of the emigrant is promoted by the change: and as a more numerous progeny is another effect of the same cause, human life is at once made a greater blessing, and more individuals are created to partake of it.

The annual expence of supporting the poor in England amounts to more than one million and a half sterling.[1] The number of persons, subsisting themselves not more than six

[1] From Easter 1775 to Easter 1776, was expended the sum of £.1,556,804:6–3 sterling. See Anderson vol. v. p. 275. This well informed writer conjectures the annual expence to be near £.2,000,000 sterling. It is to be regretted that the number and expence of the poor in the United States cannot be contrasted with such statements. The subject well merits research, and would produce the truest eulogium on our country.

months in the year, is computed at one million two hundred sixty eight thousand, and the number of beggars at forty eight thousand. In France, it has been computed that seven millions of men women and children live one with another, on twenty-five livres, which is less than five dollars a year. Every benevolent reader will make his own reflections.

Fifthly. It may not be superfluous to add, that freedom of emigration is favorable to morals. A great proportion of the vices which distinguish crowded from thin settlements, are known to have their rise in the facility of illicit intercourse between the sexes, on one hand, and the difficulty of maintaining a family, on the other. Provide an outlet for the surplus population, and marriages will be increased in proportion. Every four or five emigrants will be the fruit of a legitimate union which would not otherwise have taken place.

Sixthly. The remarks which have been made, though in many respects little applicable to the internal situation of the United States, may be of use as far as they tend to prevent mistaken and narrow ideas on an important subject. Our country being populated in different degrees in different parts of it, removals from the more compact to the more spare or vacant districts are continually going forward—The object of these removals is evidently to exchange a less easy for a more easy subsistence. The effect of them must therefore be to quicken the aggregate population of our country. Considering the progress made in some situations towards their natural complement of inhabitants, and the fertility of others, which have made little or no progress, the probable difference in their respective rates of increase is not less than as three in the former to five in the latter. Instead of lamenting then a loss of *three* human beings to Connecticut, Rhode Island, or New Jersey, the *Philanthropist*, will rejoice that *five* will be gained to New York, Vermont or Kentucky; and the *patriot* will be not less pleased that *two* will be added to *the citizens of the United States*.

PHILADELPHIA, Nov. 19, 1791.

CONSOLIDATION.[1]

Much has been said, and not without reason, against a consolidation of the States into one government. Omitting lesser objections, two consequences would probably flow from such a change in our political system, which justify the cautions used against it. *First*, it would be impossible to avoid the dilemma, of either relinquishing the present energy and responsibility of a *single* executive magistrate, for some plural substitute, which by dividing so great a trust might lessen the danger of it; or suffering so great an accumulation of powers in the hands of that officer, as might by degrees transform him into a monarch. The incompetency of one Legislature to regulate all the various objects belonging to the local governments, would evidently force a transfer of many of them to the executive department; whilst the increasing splendour and number of its prerogatives supplied by this source, might prove excitements to ambition too powerful for a sober execution of the elective plan, and consequently strengthen the pretexts for an hereditary designation of the magistrate. *Second*, were the state governments abolished, the same space of country that would produce an undue growth of the executive power, would prevent that controul on the Legislative body, which is essential to a faithful discharge of its trust, neither the voice nor the sense of ten or twenty millions of people, spread through so many latitudes as are comprehended within the United States, could ever be combined or called into effect, if deprived of those local organs, through which both can now be conveyed. In such a state of things, the impossibility of acting together, might be succeeded by the inefficacy of partial expressions of the public mind, and at length, by a universal silence and insensibility, leaving the whole government to that *self directed course*, which, it must be owned, is the natural propensity of every government.

[1] From *The National Gazette*, December 5, 1791.

But if a consolidation of the states into one government be an event so justly to be avoided, it is not less to be desired, on the other hand, that a consolidation should prevail in their interests and affections; and this, too, as it fortunately happens, for the very reasons, among others, which lie against a government consolidation. For, in the first place, in proportion as uniformity is found to prevail in the interests and sentiments of the several states, will be the practicability of accommodating Legislative regulations to them, and thereby of withholding new and dangerous prerogatives from the executive. Again, the greater the mutual confidence and affection of all parts of the Union, the more likely they will be to concur amicably, or to differ with moderation, in the elective designation of the chief magistrate; and by such examples, to guard and adorn the vital principle of our republican constitution. Lastly, the less the supposed difference of interests, and the greater the concord and confidence throughout the great body of the people, the more readily must they sympathize with each other, the more seasonably can they interpose a common manifestation of their sentiments, the more certainly will they take the alarm at usurpation or oppression, and the more effectually will they *consolidate* their defence of the public liberty.

Here then is a proper object presented, both to those who are most jealously attached to the separate authority reserved to the states, and to those who may be more inclined to contemplate the people of America in the light of one nation. Let the former continue to watch against every encroachment, which might lead to a gradual consolidation of the states into one government. Let the latter employ their utmost zeal, by eradicating local prejudices and mistaken rivalships, to consolidate the affairs of the states into one harmonious interest; and let it be the patriotic study of all, to maintain the various authorities established by our complicated system, each in its respective constitutional

sphere; and to erect over the whole, one paramount Empire of reason, benevolence, and brotherly affection.[1]

[1] TO HENRY LEE.

PHILAD^A Dec^r 18th 1791

MY DEAR SIR

I have received your favor of the 8th & handed to Freneau the subscriptions inclosed for him. His paper in the opinion here justifies the expectations of his friends and merits the diffusive circulation they have endeavoured to procure it.

I regret that I can administer no balm to the wound given by the first report of our western disaster.[2] You will have seen the official account which has gone into all the Newspapers. It does not seem to contain any of the saving circumstances you are so anxious to learn. The loss of blood is not diminished, and that of impression, is as great as the most compleat triumph of the savages can render it. The measures planning for the reparation of the calamity are not yet disclosed. The suspected relation of Indian hostility to the Western Posts, became here as with you, a subject of pretty free conversation. Mr. Hammond has officially disavowed by authority from his Court the imputation of encouraging those hostilities through the Government of Canada. He has also contradicted on his personal conviction, the allegations of like countenance to the hostile proceedings of Bowles in the Southern quarter. Nothing is yet public with respect to his general communications with the Executive. Major Thomas Pinkney is to be Minister at London.

The representation bill is still on hand. The Senate after detaining it a considerable time, and trying sundry improper expedients for making out a ratio of a different aspect from the simple and obvious one proposed to them, at length agreed by the casting voice of the Chair to alter the ratio of 1 for 30,000 to 1 for 33,000. The H of Rep^s disagreed tho' by a bare majority only. The Senate have insisted, and tomorrow will decide the eventual temper of the H of Rep_s on the subject. Should they be firm enough to adhere, the Senate will probably recede. Should a conference be proposed I auger unfavorably of the issue. The chance will be much bettered if Col. Lee who we hear is on the road, should arrive in time. Whatever the decision of the House of Rep^s may be, it will turn on very few votes, possibly on that of the chair.

On the subject of Great Falls, I insist that you do not sacrifice or risk the prospect on my account. Your honor cannot forbid, whilst my poverty continues to require, that you transfer your friendly

[2] St. Clair's defeat, November 4, 1791.

PUBLIC OPINION.[1]

Public opinion sets bounds to every government, and is the real sovereign in every free one.

As there are cases where the public opinion must be obeyed by the government; so there are cases, where not being fixed, it may be influenced by the government. This distinction, if kept in view, would prevent or decide many debates on the respect due from the government to the sentiments of the people.

In proportion as government is influenced by opinion, it must be so, by whatever influences opinion. This decides the question concerning a *Constitutional Declaration of Rights*, which requires an influence on government, by becoming a part of public opinion.

The larger a country, the less easy for its real opinion to be ascertained, and the less difficult to be counterfeited; when ascertained or presumed, the more respectable it is in the eyes of individuals.—This is favorable to the authority of government. For the same reason, the more extensive a country, the more insignificant is each individual in his own eyes.—This may be unfavorable to liberty.

Whatever facilitates a general intercourse of sentiments, as good roads, domestic commerce, a free press, and particularly a *circulation of newspapers through the entire body of the people*, and *Representatives going from, and returning among every part of them*, is equivalent to a contraction of territorial limits, and is favorable to liberty, where these may be too extensive.

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purpose from me to some other friend, whose resources will better correspond with it. Mine cannot be relied on, and I should be particularly unhappy at being accessory to the danger of one who had been so anxious to be instrumental to my advantage.

Let me beg you to reconsider your resolution, and not to let me stand in the way of your success, which I ought to wish much more on your account, than on my own being on this occasion under particular obligations to you, and on all your affectionate friend.

—*Mad. MSS.*

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[1] From *The National Gazette*, December 19, 1791.

MONEY.[1]

(Observations *written posterior to the circular Address of Congress in Sept. 1779, and prior to their Act of March, 1780.*) [2]

It has been taken for an axiom in all our reasonings on the subject of finance, that supposing the quantity and demand of things vendible in a country to remain the same, their price will vary according to the variation in the quantity of the circulating medium; in other words, that the value of money will be regulated by its quantity. I shall submit to the judgment of the public some considerations which determine to reject the proposition as founded in error. Should they be deemed not absolutely conclusive, they seem at least to show that it is liable to too many exceptions and restrictions to be taken for granted as a fundamental truth.

If the circulating medium be of universal value as specie, a local increase or decrease of its quantity, will not, whilst a communication subsists with other countries, produce a corresponding rise or fall in its value. The reason is obvious. When a redundancy of universal money prevails in any one country, the holders of it know their interest too well to waste it in extravagant prices, when it would be worth so much more to them elsewhere. When a deficiency happens, those who hold commodities, rather than part with them at an undervalue in one country, would carry them to another. The variation of prices, in these cases, cannot therefore exceed the expence and insurance of transportation.

Suppose a country totally unconnected with Europe, or with any other country, to possess specie in the same proportion to circulating property that Europe does; prices there would correspond with those in Europe. Suppose that so much specie were thrown into circulation as to make the quantity exceed the proportion of Europe tenfold, without any change in commodities or in the demand for them; as soon as such an augmentation had produced its effect, prices

[1] From *The National Gazette*, December 19 and 22, 1791.

[2] March 18, 1780. See *ante*, vol. i., p. 58, *et seq.*

would rise tenfold; or which is the same thing, money would be depreciated tenfold. In this state of things, suppose again, that a free and ready communication were opened between this country and Europe, and that the inhabitants of the former, were made sensible of the value of their money in the latter; would not its value among themselves immediately cease to be regulated by its quantity, and assimilate itself to the foreign value?

Mr. Hume in his discourse on the balance of trade supposes, "that if four fifths of all money in Britain were annihilated in one night, and the nation reduced to the same condition, in this particular, as in the reign of the Harrys and Edwards, that the price of all labour and commodities would sink in proportion, and everything be sold as cheap as in those ages: That, again, if all the money in Britain were multiplied fivefold in one night, a contrary effect would follow." This very ingenious writer seems not to have considered that in the reign of the Harrys and Edwards, the state of prices in the circumjacent nations corresponded with that of Britain; whereas in both of his suppositions, it would be no less than four fifths different. Imagine that such a difference really existed, and remark the consequence. Trade is at present carried on between Britain and the rest of Europe at a profit of 15 or 20 per cent. Were that profit raised to 400 per cent. would not their home market, in case of such a fall of prices, be so exhausted by exportation—and in case of such a rise of prices, be so overstocked with foreign commodities, as immediately to restore the general equilibrium. Now, to borrow the language of the same author, "the same causes which would redress the inequality were it to happen, must forever prevent it, without violent external operation."

The situation of a country connected by commercial intercourse with other countries, may be compared to a single town or province whose intercourse with other towns and provinces results from political connection. Will it be pretended that if the national currency were to be accumulated

in a single town or province, so as to exceed its due proportion five or tenfold, a correspondent depreciation would ensue, and every thing be sold five or ten times as dear as in a neighboring town or province?

If the circulating medium be a municipal one, as paper currency, still its value does not depend on its quantity. It depends on the credit of the state issuing it, and on the time of its redemption; and is no otherwise affected by the quantity, than as the quantity may be supposed to *endanger* or *postpone* the redemption.

That it depends in part on the credit of the issuer, no one will deny. If the credit of the issuer therefore be perfectly unsuspected, the time of redemption alone will regulate its value.

To support what is here advanced, it is sufficient to appeal to the nature of paper money. It consists of bills or notes of obligation payable in specie to bearer, either on demand or at a future day. Of the first kind is the paper currency of Britain, and hence its equivalence to specie. Of the latter kind is the paper currency of the United States, and hence its inferiority to specie. But if its being redeemable, not on demand but at a future day, be the cause of its inferiority, the distance of that day, and not its quantity, ought to be the measure of that inferiority.

It has been shown that the value of specie does not fluctuate according to the local fluctuations in its quantity. Great Britain, in which there is such an immensity of circulating paper, shews that the value of paper depends as little on its quantity as that of specie, when the paper represents specie payable on demand. Let us suppose that the circulating notes of Great Britain, instead of being payable on demand, were to be redeemed at a future day, at the end of one year for example, and that no interest was due on them. If the same assurance prevailed that at the end of the year they would be equivalent to specie, as now prevails that they are every moment equivalent, would any other effect result from such a change, except that the notes would suffer a depreciation

equal to one year's interest? They would in that case represent, not the nominal sum expressed on the face of them, but the sum remaining after a deduction of one year's interest. But if when they represent the full nominal sum of specie, their circulation contributes no more to depreciate them, than the circulation of specie itself would do; does it not follow, that if they represented a sum of specie less than the nominal inscription, their circulation ought to depreciate them no more than so much specie, if substituted, would depreciate itself? We may extend the time from one, to five, or to twenty years; but we shall find no other rule of depreciation than the loss of intermediate interest.

What has been here supposed with respect to Great Britain has actually taken place in the United States. Being engaged in a necessary war without specie to defray the expence, or to support paper emissions for that purpose redeemable on demand, and being at the same time unable to borrow, no resource was left, but to emit bills of credit to be redeemed in future. The inferiority of these bills to specie was therefore incident to the very nature of them. If they had been exchangeable on demand for specie, they would have been equivalent to it: as they were not exchangeable on demand they were inferior to it. The degree of their inferiority must consequently be estimated by the time of their becoming exchangeable for specie, that is the time of their redemption.

To make it still more palpable that the value of currency does not depend on its quantity, let us put the case, that Congress had, during the first year of the war, emitted five millions of dollars to be redeemed at the end of ten years: that, during the second year of the war, they had emitted ten millions more, but with due security that the whole fifteen millions should be redeemed in five years; that during the two succeeding years, they had augmented the emissions to one hundred millions, but from the discovery of some extraordinary sources of wealth, had been able to engage for the redemption of the whole sum in one year. It is asked,

whether the depreciation, under these circumstances, would have increased as the quantity of money increased—or whether on the contrary, the money would not have risen in value, at every accession to its quantity?

It has indeed happened, that a progressive depreciation of our currency has accompanied its growing quantity; and to this is probably owing in a great measure the prevalence of the doctrine here opposed. When the fact however is explained, it will be found to coincide perfectly with what has been said. Every one must have taken notice that, in the emissions of Congress, no precise time has been stipulated for their redemption, nor any specific provision made for that purpose. A general promise entitling bearer to so many dollars of metal as the paper bills express, has been the only basis of their credit. Every one therefore has been left to his own conjectures as to the time the redemption would be fulfilled; and as every addition made to the quantity in circulation, would naturally be supposed to remove to a proportionally greater distance the redemption of the whole mass, it could not happen otherwise than that every additional emission would be followed by a further depreciation.

In like manner has the effect of a distrust of public credit, the other source of depreciation, been erroneously imputed to the quantity of money. The circumstances under which our early emissions were made, could not but strongly concur with the futurity of their redemption, to debase their value. The situation of the United States resembled that of an individual engaged in an expensive undertaking, carried on, for want of cash, with bonds and notes secured on an estate to which his title was disputed; and who had besides, a combination of enemies employing every artifice to disparage that security. A train of sinister events, during the early stages of the war likewise contributed to increase the distrust of the *public ability* to fulfill their engagements. Before the depreciation arising from this cause was removed by success of our arms, and our alliance with France, it had

drawn so large a quantity into circulation, that the quantity soon after begat a distrust of the *public disposition* to fulfill their engagements; as well as new doubts, in timid minds, concerning the issue of the contest. From that period, this cause of depreciation has been incessantly operating. It has first conduced to swell the amount of necessary emissions, and from that very amount has derived new force and efficacy to itself. Thus, a further discredit of our money has necessarily followed the augmentation of its quantity; but every one must perceive, that it has not been the effect of the quantity, considered in itself, but considered as an omen of public bankruptcy.[1]

Whether the money of a country, then, be gold and silver, or paper currency, it appears that its value depends on the general proportion of gold and silver, to the circulating property throughout all countries having free communication. If

[1] *As the depreciation of our money has been ascribed to a wrong cause, so, it may be remarked, have effects been ascribed to the depreciation, which result from other causes. Money is the instrument by which men's wants are supplied, and many who possess it will part with it for that purpose, who would not gratify themselves at the expence of their visible property. Many also may acquire it, who have no visible property. By increasing the quantity of money therefore, you both increase the means of spending, and stimulate the desire to spend; and if the objects desired do not increase in proportion, their price must rise from the influence of the greater demand for them. Should the objects in demand happen, at the same juncture, as in the United States, to become scarcer, their price must rise in a double proportion.*

It is by this influence of an augmentation of money on demand, that we ought to account for the proportional level of money in all countries, which Mr. Hume attributes to its direct influence on prices. When an augmentation of national coin takes place, it may be supposed either, 1. not to augment demand at all; or, 2. to augment it so gradually that a proportional increase of industry will supply the objects of it; or, 3. to augment it so rapidly that the domestic market may prove inadequate, whilst the taste for distinction natural to wealth, inspires, at the same time, a preference for foreign luxuries. The first case can seldom happen. Were it to happen, no change in prices, nor any efflux of money, would ensue; unless indeed, it should be employed, or loaned abroad.

the latter, it depends on the credit of the state issuing it, and the time at which it is to become equal to gold and silver.

Every circumstance which has been found to accelerate the depreciation of our currency naturally resolves itself into these general principles. The spirit of monopoly hath affected it in no other way than by creating an artificial scarcity of commodities wanted for public use, the consequence of which has been an increase of their price, and of the necessary emissions. Now it is this increase of emissions which has been shewn to lengthen the supposed period of their redemption, and to foster suspicions of public credit. Monopolies destroy the natural relation between money and commodities; but it is by raising the value of the latter, not by debasing that of the former. Had our money been gold or silver, the same prevalence of monopoly would have had the same effect on prices and expenditures; but these would not have had the same effect on the value of money.

The superfluous portion would be either hoarded or turned into plate. The second case occurs only where the augmentation of money advances with a very slow and equable pace; and would be attended neither with a rise of prices, nor with a superfluity of money. The third is the only case, in which the plenty of money would occasion it to overflow into other countries. The insufficiency of the home market to satisfy the demand would be supplied from such countries as might afford the articles in demand; and the money would thus be drained off, till that and the demand excited by it, should fall to a proper level, and a balance be thereby restored between exports and imports.

The principle on which Mr. Hume's theory, and that of Montesquieu's before him, is founded, is materially erroneous. He considers the money in every country as the representative of the whole circulating property and industry in the country; and thence concludes that every variation in its quantity must increase or lessen the portion which represents the same portion of property or labor. The error lies in supposing, that because money serves to measure the value of all things, it represents and is equal in value to all things. The circulating property in every country, according to its market rate, far exceeds the amount of its money. At Athens oxen, at Rome sheep, were once used as a measure of the value of all things. It will hardly be supposed, they were therefore equal in value to all other things.

The depreciation of our money has been charged on misconduct in the purchasing departments; but this misconduct must have operated in the same manner as the spirit of monopoly. By unnecessarily raising the price of articles required for the public use, it has swelled the amount of necessary emissions, on which has depended the general opinion concerning the time and the probability of their redemption.

The same remark may be applied to the deficiency of imported commodities. The deficiency of these commodities has raised the price of them; the rise of their price has increased the emissions for purchasing them; and with the increase of emissions, have increased the suspicions concerning their redemption.

Those who consider the quantity of money as the criterion of its value, compute the intrinsic depreciation of our currency by dividing the whole mass by the supposed necessary medium of circulation. Thus supposing the medium necessary for the United States to be 30,000,000. dollars, and the circulating emissions to be 200,000,000, the intrinsic difference between paper and specie will be nearly as 7 for 1. If its value depends on the time of its redemption, as hath been above maintained, the real difference will be found to be considerably less. Suppose the period necessary for its redemption to be 18 years, as seems to be understood by Congress; 100 dollars of paper 18 years hence will be equal in value to 100 dollars of specie; for at the end of that term, 100 dollars of specie may be demanded for them. They must consequently at this time be equal to as much specie as, with compound interest, will amount, in that number of years, to 100 dollars. If the interest of the money be rated at 5 per cent. this present sum of specie will be about 41½ dollars. Admit, however the use of money to be worth 6 per cent. about 35 dollars will then amount in 18 years to 100. 35 dollars of specie therefore is at this time equal to 100 of paper; that is, the man who would exchange his specie for paper at this discount, and lock it in his desk for 18 years, would get 6 per

cent. for his money. The proportion of 100 to 35 is less than 3 to 1. The intrinsic depreciation of our money therefore, according to this rule of computation, is less than 3 to 1; instead of 7 to 1, according to the rule espoused in the circular address, or of 30 or 40 to 1, according to its currency in the market.

I shall conclude with observing, that if the preceding principles and reasoning be just, the plan on which our domestic loans have been obtained, must have operated in a manner directly contrary to what was intended. A loan office certificate differs in nothing from a common bill of credit, except in its higher denomination, and the interest allowed on it; and the interest is allowed, merely as a compensation to the lender, for exchanging a number of small bills, which being easily transferable, are most convenient, for a single one so large as not to be transferable in ordinary transactions. As the certificates, however, do circulate in many of the more considerable transactions, it may justly be questioned, even on the supposition that the value of money depended on its quantity, whether the advantage to the public from the exchange, would justify the terms of it. But dismissing this consideration, I ask whether such loans do in any shape, lessen the public debt, and thereby render the discharge of it less suspected or less remote? Do they give any new assurance that a paper dollar will be one day equal to a silver dollar, or do they shorten the distance of that day? Far from it: The certificates continue a part of the public debt no less than the bills of credit exchanged for them, and have an equal claim to redemption within the general period; nay, are to be paid off long before the expiration of that period, with bills of credit, which will thus be returned into the general mass, to be redeemed along with it. Were these bills, therefore, not to be taken out of circulation at all, by means of the certificates, not only the expence of offices for exchanging, re-exchanging and annually paying the interest, would be avoided; but the whole sum of interest would be saved,

which must make a formidable addition to the public emissions, protract the period of their redemption, and proportionately increase their depreciation. No expedient could perhaps have been devised more preposterous and unlucky. In order to relieve public credit sinking under the weight of an enormous debt, we invent new expenditures. In order to raise the value of our money, which depends on the time of its redemption, we have recourse to a measure which removes its redemption to a more distant day. Instead of paying off the capital to the public creditors, we give them an enormous interest to change the name of the bit of paper which expresses the sum due to them; and think it a piece of dexterity in finance, by emitting *loan-office certificates*, to elude the necessity of *emitting bills of credit*.

GOVERNMENT.[1]

In monarchies there is a two-fold danger—1st, That the eyes of a good prince cannot see all that he ought to know—2d, That the hands of a bad one will not be tied by the fear of combinations against him. Both of these evils increase with the extent of dominion; and prove, contrary to the received opinion, that monarchy is even more unfit for a great

[1] From *The National Gazette*, January 2, 1792.

TO HENRY LEE.

My dear Sir Philadelphia, Jan^{y} 1st, 1792.

. . . . . .

You already know the fate of the apportionment Bill—the subject was revived in the Senate, but I understand has been suspended in order to give an opportunity to the house of Rep^{s} to procede in a second Bill if it pleases—Nothing however has been done in it, and it is difficult to say when or in what form the business will be resumed—The subject most immediately in hand in the House of Rep^{s} is the Post office Bill, which has consumed much time and is still in an unfinished state—you see in the Newspapers historical sketches of its progress—

The Senate have of late been much occupied by the nominations of the President for foreign courts—that is, M^{r} Thomas Pinkney for

state, than for a small one, notwithstanding the greater tendency in the former to that species of government.

Aristocracies, on the other hand, are generally seen in small states; where a concentration of public will is required by external danger, and that degree of concentration is found sufficient. The *many* in such cases, cannot govern on account of emergencies which require the promptitude and precautions of a *few;* whilst the few themselves, resist the usurpations of a single tyrant. In Thessaly, a country intersected by mountainous barriers into a number of small cantons, the governments, according to Thucydides, were in most instances,

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London—Gov^r. Morris, for Paris, & Short for the Hague—a considerable diversity of opinion is said to prevail, and to be the cause of delay in coming to a decision—

The disturbances in Hispaniola continue without abatement, and tis certain that the contagion is reaching Jamaica—

The plan for retrieving our Western affairs is not yet before the Legislature—

I enclose the report of the Sec^y of the Treasury on Manufactures—What think you of the commentary (pages 36 & 37) on the terms "general welfare"?—The federal Gov^t. has been hitherto limited to the specified powers, by the Greatest Champions for Latitude in expounding those powers—If not only the *means*, but the *objects* are unlimited, the parchment had better be thrown into the fire at once—I sent you by M^r. Brackenridge a number of Surveys for our friend Baron Steuben, and have acquainted him with a state of the business as far as I could collect it—Whenever you can supply any further information I shall be ready to aid in forwarding it to him—

With the sincerest affection
Yrs always —*Mad. MSS.*

Lee was then Governor of Virginia. He replied to the letter, January 8:

". . . But really I have discovered no one measure of the gen^l go^t. which has been attended with success, except the fiscal schemes whose completion the moment the abominable principles on which they are built became sanctioned by the national Legislature, were certain.

"I find you was one & first of three in your house appointed to draft an answer to the late presidential speech—Read the first clause

oligarchical. Switzerland furnishes similar examples.—The smaller the state, the less intolerable is this form of government, its rigors being tempered by the facility and the fear of combinations among the people.

A republic involves the idea of popular rights. A representative republic *chuses* the wisdom, of which hereditary aristocracy has the *chance;* whilst it excludes the oppression of that form. And a confederated republic attains the force of monarchy, whilst it avoids the ignorance of a good prince, and the oppression of a bad one. To secure all the advantages of such a system, every good citizen will be at once a centinel over the rights of the people; over the authorities of the federal government: and over both the rights and the authorities of the intermediate governments.

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of your reply and tell me how you would impute the prosperity of the U. States in any degree, much more in the degree you did, to the laws of Congress. No man loves and venerates the P. more than I do, and to hurt his feelings would be doleful to my heart; but had I been a member of your house, I should certainly in defiance of all other considerations arrest that servile custom of re-echoing whatever is communicated without respect to fact. We owe our prosperity such as it is, for it is nothing extraordinary to our own native vigor as a people & to a continuation of peace, not to the wisdom or care of gov^{t}. Indelibly stained is the wisdom the honor & justice of the gov^{t} by those fashionable treasury schemes imitative of the base principles & wicked measures adopted thro necessity in corrupt monarchies and long since reprobated (tho continued) by the wise & good in the countrys where they exist. . . . I deeply lament the sad event, but really I see no redress, unless the gov^{t} itself be destroyed. This is risking too much because great evils indubitably must grow from discord & the people must suffer greatly whatever may be the event of such an experiment. The money interest is growing daily more & more formidable, they are industrious, they combine they concert measures, they beset every avenue of information, & they bespatter the character of every individual who dares to utter an opinion hostile to the fiscal measures—So that the chance of successful opposition is more & more doubtful. Men hate to risk without tolerable hopes of success. To this cause I impute the submission of so many well informed heads & honest hearts to the base perversion of the constitution of the U. S.

CHARTERS.[2]

In Europe, charters of liberty have been granted by power. America has set the example and France has followed it, of charters of power granted by liberty. This revolution in the practice of the world, may, with an honest praise, be pronounced the most triumphant epoch of its history, and the most consoling presage of its happiness. We look back, already, with astonishment, at the daring outrages committed by despotism, on the reason and rights of man; we look forward with joy, to the period, when it shall be despoiled of all its usurpations, and bound forever in the chains, with which it had loaded its miserable victims.

In proportion to the value of this revolution; in proportion to the importance of instruments, every word of which decides a question between power and liberty; in proportion to

"Never did practice so flatly contradict theory as the paper & the administration of it so far. . . ."—*Mad. MSS.*

The reply to the President's speech, adopted October 27, which Madison had drawn up was perfunctory. The opening clause to which Lee objected read:

"In receiving your Address, at the opening of the present session, the House of Representatives have taken an ample share in the feelings inspired by the actual prosperity and flattering prospects of our country; and whilst, with becoming gratitude to Heaven, we ascribe this happiness to the true source from which it flows, we behold with an animated pleasure the degree in which the Constitution and Laws of the United States have been instrumental in dispensing it."

Lee wrote again, Jany. 17, 1792:

". . . In that funding system will undo us, such an unnecessary wanton base infamous plan never was fostered for a moment by a people circumstanced as we were: yet it has not only been fostered but absolutely rivetted upon us—While we deprecate & lament the obnoxious event we must submit to it, because effectual opposition may beget civil discord & civil war.

"I wish to god the debt could be discharged, the banditti paid off, & a like scheme prohibited in future. . . ."—*Mad. MSS.*

The next letter, January 29, is endorsed by Madison: "Evidence

[2] From *The National Gazette*, January 19, 1792.

the solemnity of acts, proclaiming the will authenticated by the seal of the people, the only earthly source of authority, ought to be the vigilance with which they are guarded by every citizen in private life, and the circumspection with which they are executed by every citizen in public trust.

As compacts, charters of government are superior in obligation to all others, because they give effect to all others. As truths, none can be more sacred, because they are bound, on the conscience by the religious sanctions of an oath. As metes and bounds of government, they transcend all other land-marks, because every public usurpation is an encroachment on the private right, not of one, but of all.

The citizens of the United States have peculiar motives to support the energy of their constitutional charters.

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of General H. Lee's disaffection to the policy & measures of the Federal Government during several of the early years of Washington's administration, and of his partiality for Freneau's National Gazette." It proceeds:

". . . I admire the constitution, I revere the principles on which it is founded & love affectionately the objects which it contemplated. All that grieves me is, the perverseness of its administration. The effects heretofore produced are spurious, but have been so successful as to render in my judgment a change of constitution in operation certain altho there will be no change for a long time in names. . . ."—*Mad. MSS.*

The letter contains no direct allusion to Freneau's paper, but on February 6 he wrote:

". . . Freneau's Gazette you mention has not reached me, nor indeed have I for two mails got any papers from him. This precariousness in the reception of his paper will cramp the circulation of it, for which I am exceedingly sorry as it is rising fast into reputation.

"Innes is so pleased with the attention of the editor to political matters and to the independence evidenced in his selection of home information that he has desired me to procure for him the Gazette and to request that all the papers from the beginning be forwarded.

"This you will please to do & give Innes's address & residence.

"I intend to urge Davies the public printer here to re-publish [*illegible*] & such other political matters as serve to inform the people." —*Mad. MSS.*

Having originated the experiment, their merit will be estimated by its success.

The complicated form of their political system arising from the partition of government between the states and the union, and from the separations and subdivisions of the several departments in each, requires a more than common reverence for authority which is to preserve order thro' the whole.

Being republicans, they must be anxious to establish the efficacy of popular charters, in defending liberty against power, and power against licentiousness; and in keeping every portion of power within its proper limits; by this means discomforting the partizans of anti-republican contrivances for the purpose.

All power has been traced up to opinion. The stability of all governments and security of all rights may be traced to the same source. The most arbitrary government is controuled where the public opinion is fixed. The despot of Constantinople dares not lay a new tax, because every slave thinks he ought not. The most systematic governments are turned by the slightest impulse from their regular path, where public opinion no longer holds them in it. We see at this moment the *executive* magistrate of Great-Britain, exercising under the authority of the representatives of the *people*, a *legislative* power over the West-India commerce.

How devoutly is it to be wished, then, that the public opinion of the United States should be enlightened; that it should attach itself to their governments as delineated in *great charters*, derived not from the usurped power of kings, but from the legitimate authority of the people; and that it should guarantee, with a holy zeal, these political scriptures from every attempt to add to or diminish from them. Liberty and order will never be *perfectly* safe, until a trespass on the constitutional provisions for either, shall be felt with the same keenness that resents an invasion of the dearest rights, until every citizen shall be an Argus to espy, and an Ægeon to avenge, the unhallowed deed.

PARTIES.[1]

In every political society, parties are unavoidable. A difference of interests, real or supposed is the most natural and fruitful source of them. The great objects should be to combat the evil: 1. By establishing political equality among all. 2. By withholding *unnecessary* opportunities from a few, to increase the inequality of property, by an immoderate, and especially unmerited, accumulation of riches. 3. By the silent operation of laws, which, without violating the rights of property, reduce extreme wealth towards a state of mediocrity, and raise extreme indigence towards a state of comfort. 4. By abstaining from measures which operate differently on different interests, and particularly such as favor one interest, at the expence of another. 5. By making one party a check on the other, so far as the existence of parties cannot be prevented, nor their views accommodated.—If this is not the language of reason, it is that of republicanism.

In all political societies, different interests and parties arise out of the nature of things, and the great art of politicians lies in making them checks and balances to each other. Let us then increase these *natural distinctions* by favoring an inequality of property; and let us add to them artificial distinctions, by establishing *kings* and *nobles*, and *plebeians*. We shall then have the more checks to oppose to each other; we shall then have the more scales and the more weights to protect and maintain the equilibrium. This is as little the voice of reason, as it is of republicanism.

From the expediency, in politics, of making natural parties, mutual checks on each other, to infer the propriety of creating artificial parties, in order to form them into mutual checks, is not less absurd than it would be in ethics, to say, that new vices ought to be promoted, where they would counteract each other, because this use may be made of existing vices.

[1] From *The National Gazette*, January 23, 1792.

BRITISH GOVERNMENT.[1]

The boasted equilibrium of this government (so far as it is a reality) is maintained less by the distribution of its powers, than by the force of public opinion. If the nation were in favour of absolute monarchy, the public liberty would soon be surrendered by their representatives. If a republican form of government were preferred, how could the monarch resist the national will? Were the public opinion neutral only, and the public voice silent, ambition in the House of Commons could wrest from him his prerogatives, or the avarice of its members, might sell to him its privileges.

The provision required for the civil list, at every accession of a king, shews at once his dependence on the representative branch, and its dependence on the public opinion. Were this establishment to be made from year to year, instead of being made for life (a change within the legislative power) the monarchy, unless maintained by corruption, would dwindle into a name. In the present temper of the nation, however, they would obstruct such a change, by taking side with their king, against their representatives.

Those who ascribe the preservation of the British government to the form in which its powers are distributed and balanced, forget the evolutions which it has undergone.—Compare its primitive with its present form.

A king at the head of 7 or 800 barons, sitting together in their own right, or (admitting another hypothesis) some in their own right, others as representatives of a few lesser barons, but still sitting together as a single House; and the judges holding their offices during the pleasure of the king; such was the British government at one period.

At present a king is seen at the head of a legislature, consisting of two Houses, each jealous of the other, one sitting in their own right, the other representing the people; and the judges forming a distinct and independent department.

In the first case the judiciary is annexed to the executive,

[1] From *The National Gazette*, January 30, 1792.

and the legislature not even formed into separate branches. In the second, the legislative, executive and judiciary are distinct; and the legislative subdivided into rival branches.

What a contrast in these forms. If the latter be self balanced, the former could have no balance at all. Yet the former subsisted as well as the latter, and lasted longer than the latter, dating it from 1688, has been tried.

The former was supported by the opinion and circumstances of the times, like many of the intermediate variations, through which the government has passed; and as will be supported, the future forms through which it probably remains to be conducted, by the progress of reason, and change of circumstances.

UNIVERSAL PEACE.[1]

Among the various reforms which have been offered to the world, the projects for universal peace have done the greatest honor to the hearts, though they seem to have done very little to the heads of their authors. Rousseau, the most distinguished of these philanthropists, has recommended a confederation of sovereigns, under a council of deputies, for the double purpose of arbitrating external controversies among nations, and of guaranteeing their respective governments against internal revolutions. He was aware, neither of the impossibility of executing his pacific plan among governments which feel so many allurements to war, nor, what is more extraordinary, of the tendency of his plan to perpetuate arbitrary power wherever it existed; and, by extinguishing the hope of one day seeing an end of oppression, to cut off the only source of consolation remaining to the oppressed.

A universal and perpetual peace, it is to be feared, is in the catalogue of events, which will never exist but in the imaginations of visionary philosophers, or in the breasts of benevolent enthusiasts. It is still however true, that war

[1] From *The National Gazette*, February 2, 1792.

contains so much folly, as well as wickedness, that much is to be hoped from the progress of reason; and if any thing is to be hoped, every thing ought to be tried.

Wars may be divided into two classes: one flowing from the mere will of the government, the other according with the will of the society itself.

Those of the first class can no otherwise be prevented than by such a reformation of the government, as may identify its will with the will of the society. The project of Rousseau, was, consequently, as preposterous as it was impotent. Instead of beginning with an external application, and even precluding internal remedies, he ought to have commenced with, and chiefly relied on, the latter prescription.

He should have said, whilst war is to depend on those whose ambition, whose revenge, whose avidity, or whose caprice may contradict the sentiment of the community, and yet be uncontrouled by it; whilst war is to be declared by those who are to spend the public money, not by those who are to pay it; by those who are to direct the public forces, not by those who are to support them; by those whose power is to be raised, not by those whose chains may be riveted, the disease must continue to be *hereditary* like the government of which it is the offspring. As the first step towards a cure, the government itself must be regenerated. Its will must be made subordinate to, or rather the same with, the will of the community.

Had Rousseau lived to see the constitution of the United States and of France, his judgment might have escaped the censure to which his project has exposed it.

The other class of wars, corresponding with the public will, are less susceptible of remedy. There are antidotes, nevertheless, which may not be without their efficacy. As wars of the first class were to be prevented by subjecting the will of the government to the will of the society, those of the second class can only be controuled by subjecting the will of the society to the reason of the society; by establishing

permanent and constitutional maxims of conduct, which may prevail over occasional impressions and inconsiderate pursuits.

Here our republican philosopher might have proposed as a model to lawgivers, that war should not only be declared by the authority of the people, whose toils and treasures are to support its burdens, instead of the government which is to reap its fruits: but that each generation should be made to bear the burden of its own wars, instead of carrying them on, at the expence of other generations. And to give the fullest energy to his plan, he might have added, that each generation should not only bear its own burdens, but that the taxes composing them, should include a due proportion of such as by their direct operation keep the people awake, along with those, which being wrapped up in other payments, may leave them asleep, to misapplications of their money.

To the objection, if started, that where the benefits of war descend to succeeding generations, the burdens ought also to descend, he might have answered; that the exceptions could not be easily made; that, if attempted, they must be made by one only of the parties interested; that in the alternative of sacrificing exceptions to general rules, or of converting exceptions into general rules, the former is the lesser evil; that the expense of *necessary* wars, will never exceed the resources of an *entire* generation; that, in fine the objection vanishes before the fact, that in every nation which has drawn on posterity for the support of its wars, the *accumulated interest* of its perpetual debts, has soon become more than a *sufficient principal* for all its exigencies.

Were a nation to impose such restraints on itself, avarice would be sure to calculate the expences of ambition; in the equipoise of these passions, reason would be free to decide for the public good; and an ample reward would accrue to the state, first, from the avoidance of all its wars of folly, secondly, from the vigor of its unwasted resources for wars of necessity and defence. Were all nations to follow the example, the

reward would be doubled to each; and the temple of Janus might be shut, never to be opened more.

Had Rousseau lived to see the rapid progress of reason and reformation, which the present day exhibits, the philanthropy which dictated his project would find a rich enjoyment in the scene before him. And after tracing the past frequency of wars to a will in the government independent of the will of the people; to the practice by each generation of taxing the principal of its debts on future generations; and to the facility with which each generation is seduced into assumption of the interest, by the deceptive species of taxes which pay it; he would contemplate, in a reform of every government subjecting its will to that of the people, in a subjection of each generation to the payment of its own debts, and in a substitution of a more palpable, in place of an imperceptible mode of paying them, the only hope of Universal and Perpetual Peace.

GOVERNMENT OF THE UNITED STATES.[1]

Power being found by universal experience liable to abuses, a distribution of it into separate departments, has become a first principal of free governments. By this contrivance, the portion entrusted to the same hands being less, there is less room to abuse what is granted; and the different hands being interested, each in maintaining its own, there is less opportunity to usurp what is not granted. Hence the merited praise of governments modelled on a partition of their powers into legislative, executive, and judiciary, and a repartition of the legislative into different houses.

The political system of the United States claims still higher praise. The power delegated by the people is first divided between the general government and the state governments; each of which is then subdivided into legislative, executive,

[1] From *The National Gazette*, February 6, 1792.

and judiciary departments. And as in a single government these departments are to be kept separate and safe, by a defensive armour for each; so, it is to be hoped, do the two governments possess each the means of preventing or correcting unconstitutional encroachments of each other.

Should this improvement on the theory of free government not be marred in the execution, it may prove the best legacy ever left by lawgivers to their country, and the best lesson ever given to the world by its benefactors. If a security against power lies in the division of it into parts mutually controuling each other, the security must increase with the increase of the parts into which the whole can be conveniently formed.

It must not be denied that the task of forming and maintaining a division of power between different governments, is greater than among different departments of the same governments; because it may be more easy (though sufficiently difficult) to separate, by proper definitions, the legislative, executive, and judiciary powers, which are more distinct in their nature, than to discriminate, by precise enumerations, one class of legislative powers from another class, one class of executive from another class, and one class of judiciary from another class; where the powers being of a more kindred nature, their boundaries are more obscure and run more into each other.

If the test be difficult, however, it must by no means be abandoned. Those who would pronounce it impossible, offer no alternative to their country but schism, or consolidation; both of them bad, but the latter the worst, since it is the high road to monarchy, than which nothing worse, in the eye of republicans, could result from the anarchy implied in the former.

Those who love their country, its repose, and its republicanism, will study to avoid the alternative, by elucidating and guarding the limits which define the two governments; by inculcating moderation in the exercise of the powers of both.

and particularly a mutual abstinence from such as might nurse present jealousies, or engender greater.

In bestowing the eulogies due to the particular and internal checks of power, it ought not the less to be remembered, that they are neither the sole nor the chief palladium of constitutional liberty. The people who are authors of this blessing, must also be its guardians. Their eyes must be ever ready to mark, their voice to pronounce, and their arm to repel or repair aggressions on the authority of their constitutions; the highest authority next to their own, because the immediate work of their own, and the most sacred part of their property, as recognizing and recording the title to every other.

SPIRIT OF GOVERNMENTS.[1]

No Government is perhaps reducible to a sole principle of operation. Where the theory approaches nearest to this character, different and often heterogeneous principles mingle their influence in the administration. It is useful, nevertheless, to analyse the several kinds of government, and to characterize them by the spirit which predominates in each.

Montesquieu has resolved the great operative principles of government into fear, honor, and virtue, applying the first to pure despotisms, the second to regular monarchies, and the third to republics. The portion of truth blended with the ingenuity of this system sufficiently justifies the admiration bestowed on its author. Its accuracy however can never be defended against the criticisms which it has encountered. Montesquieu was in politics not a Newton or a Locke, who established immortal systems, the one in matter, the other in mind. He was in his peculiar science what Bacon was in universal science. He lifted the veil from the venerable errors which enslaved opinion, and pointed the way to those luminous truths of which he had but a glimpse himself.

[1] From *The National Gazette*, February 20, 1792.

May not governments be properly divided, according to their predominant spirit and principles into three species of which the following are examples?

First. A government operating by a permanent military force, which at once maintains the government, and is maintained by it; which is at once the cause of burdens on the people, and of submission in the people to their burdens. Such have been the governments under which human nature has groaned through every age. Such are the governments which still oppress it in almost every country of Europe, the quarter of the globe which calls itself the pattern of civilization, and the pride of humanity.

Secondly. A government operating by corrupt influence; substituting the motive of private interest in place of public duty; converting its pecuniary dispensations into bounties to favorites, or bribes to opponents; accommodating its measures to the avidity of a part of the nation instead of the benefit of the whole; in a word, enlisting an army of interested partizans, whose tongues, whose pens, whose intrigues, and whose active combinations, by supplying the terror of the sword, may support a real domination of the few, under an apparent liberty of the many. Such a government, wherever to be found, is an impostor. It is happy for the new world that it is not on the west side of the Atlantic. It will be both happy and honorable for the United States, if they never descend to mimic the costly pageantry of this form, nor betray themselves into the venal spirit of its administration.

Thirdly. A government deriving its energy from the will of the society, and operating by the reason of its measures, on the understanding and interest of the society. Such is the government for which philosophy has been searching, and humanity been fighting, from the most remote ages. Such are republican governments which it is the glory of America to have invented, and her unrivalled happiness to possess. May her glory be compleated by every improvement on the theory which experience may teach; and her happiness be

perpetuated by a system of administration corresponding with the purity of the theory.[1]

[1] February 6, 1792, in the debate on the bill to encourage the cod fisheries Madison repeated his constitutional views substantially as in his speech of February 8, 1791.

TO EDMUND PENDLETON.

PHILAD^A Feby 21, 1792.

DEAR SIR

Your favor of the 8th did not come to hand till this afternoon. I thank you for the very just & interesting observations contained in it. I have not yet met with an opportunity of forwarding the Report on Manufactures; nor has that subject been yet regularly taken up. The constitutional doctrine however advanced in the Report, has been anticipated on another occasion, by its zealous friends; and I was drawn into a few hasty animadversions the substance of which you will find in one of the inclosed papers. It gives me great pleasure to find my exposition of the Constitution so well supported by yours.

The Bill concerning the election of a President & Vice President and the eventual successor to both, which has long been depending, has finally got through the two Houses. It was made a question whether the number of electors ought to correspond with the new apportionment or the existing House of Rep^s. The text of the Constitution was not decisive, and the Northern interest was strongly in favor of the latter interpretation. The intrinsic rectitude however of the former turned the decision in both houses in favor of the Southern. On another point the Bill certainly errs. It provides that in case of a double vacancy, the Executive powers shall devolve on the Pres^t. pro tempore of the Senate & he failing, on the Speaker of the House of Rep^s.[2] The objections to this arrangement are various, 1. it may be questioned whether these are officers in the constitutional sense. 2. if officers whether both could be introduced. 3. as they are created by the Constitution, they would probably have been there designated if contemplated for such a service, instead of being left to the Legislative selection. 4. Either they will retain their *Legislative* stations, and then incompatible functions will be blended; or the incompatibility will supersede those stations, & then those being the substratum of the adventitious functions, these must fail also. The Constitution

[2] The succession was deflected from the Secretary of State because Jefferson then held the office.

REPUBLICAN DISTRIBUTION OF CITIZENS.[1]

A perfect theory on this subject would be useful, not because it could be reduced to practice by any plan of legislation, or ought to be attempted by violence on the will or property of individuals: but because it would be a monition against empirical experiments by power, and a model to which the free choice of occupations by the people, might gradually approximate the order of society.

The best distribution is that which would most favor *health*, *virtue*, *intelligence* and *competency* in the *greatest number* of citizens. It is needless to add to these objects, *liberty* and safety. The first is presupposed by them. The last must result from them.

The life of the husbandman is pre-eminently suited to the comfort and happiness of the individual. *Heatlh*, the first of blessings, is an appurtenance of this property and his employment. *Virtue*, the health of the soul, is another part of his patrimony, and no less favored by his situation. Intelligence may be cultivated in this as well as in any other walk of life. If the mind be less susceptible of polish in retirement

says, Cong^s^ may declare *what officers &c.* which seems to make it not an appointment or a translation; but an annexation of one office or trust to another office. The House of Rep^s^ proposed to substitute the Secretary of State, but the Senate disagreed, & there being much delicacy in the matter it was not pressed by the former.

Another Representation Bill has gone to the Senate modelled on the double idea mentioned in my last. 1 for 30,000 is the ratio fixed both for the late & the proposed Census. The fate of the Bill in the Senate is problematical. The Bill immediately before the H. of Rep^s^ is a Militia Bill.

I have nothing to add to the contents of the Newspapers on other subjects foreign or domestic.

With the highest esteem & sincere aff^n^

I remain Dear Sir Y^rs.^

—*Mad. MSS.*

[1] From *The National Gazette*, March 5, 1792.

TO JAMES MADISON

Hon^d^ Sir PHILAD^A^ March 15, 1792.

The last letter rec^d^ from you was that of Feb^y^ 1. Since my answer to that the state of the roads & rivers has been such as to render the

than in a crowd, it is more capable of profound and comprehensive efforts. Is it more ignorant of some things? It has a compensation in its ignorance of others. *Competency* is more universally the lot of those who dwell in the country, when liberty is at the same time their lot. The extremes both of want and of waste have other abodes. 'T is not the country that peoples either the Bridewells or the

conveyance of letters very tedious if not uncertain, and thence to produce the interval between that date & the present. I now inclose 5$^{nos.}$ of the *National Gazette*—which continue the intelligence through out the period of my silence—You will find noticed the progress of the business in Con^{s} and particularly the bills that have passed into laws. The representation-bill which as it went to the Senate proposed again the simple ratio of 1 for 30,000 applied to the respective members in each state, and a second census within a short time to be followed by a like ratio, has come back with the latter provision struck out, and the former so altered as to make the number of Rep^{s} amount to 120, instead of 112. This is the more extraordinary as the N^{o} 112 was considered before as too great and a ratio of 1 for 33,000 insisted on & the bill sacrificed to it. The secret of the business is that by these different rules the relative number of East^{n} & South^{n} members is varied. The number of 120 is made out by applying 1 for 30,000 to the aggregate population of the U. S. and allowing to *fractions* of certain amount an additional member.[1]

The House of Rep^{s} have been for several days taken up with the Georgia election, which will probably consume several more, a good deal of the more important business still remains to be done; altho' there seems to be a pretty general determination to close the session early in next week.

Leiper has not yet sold your Tob^{o} The price continues so low that he thinks a change must be for the better & ought to be waited for. The price of sugar has rather risen of late, and seems likely to remain high for some time. The state of the public debt has fallen considerably as you will see by the inclosed papers. You had better have complied with my advice with regard to your little interest in that article, and had in my opinion still better send me a power of attorney as to the principal as well as the interest. With my dutiful regards to my mother.—*Mad. MSS.*

[1] Washington vetoed the bill April 5, 1792, because it made an uneven proportion and allowed eight states more representatives than 1 to every 30,000 of their inhabitants.—*Messages and Papers of the Presidents*, i., 124.

Bedlams. These mansions of wretchedness are tenanted from the distresses and vice of overgrown cities.

The condition, to which the blessings of life are most denied is that of the sailor. His health is continually assailed and his span shortened by the stormy element to which he belongs. His virtue, at no time aided, is occasionally exposed to every scene that can poison it. His mind, like his body, is imprisoned within the bark that transports him.

Though traversing and circumnavigating the globe, he sees nothing but the same vague objects of nature, the same monotonous occurrences in ports and docks; and at home in his vessel, what new ideas can shoot from the unvaried use of the ropes and the rudder, or from the society of comrades as ignorant as himself? In the supply of his wants he often feels a scarcity, seldom more than a bare sustenance; and if his ultimate prospects do not embitter the present moment, it is because he never looks beyond it. How unfortunate, that in the intercourse, by which nations are enlightened and refined, and their means of safety extended, the immediate agents should be distinguished by the hardest condition of humanity.

The great interval between the two extremes, is, with a few exceptions, filled by those who work the materials furnished by the earth in its natural or cultivated state.

It is fortunate in general, and particularly for this country, that so much of the ordinary and most essential consumption, takes place in fabrics which can be prepared in every family, and which constitute indeed the natural ally of agriculture. The former is the work within doors, as the latter is without; and each being done by hands or at times, that can be spared from the other, the most is made of everything.

The class of citizens who provide at once their own food and their own raiment, may be viewed as the most truly independent and happy. They are more: they are the best basis of public liberty, and the strongest bulwark of public safety. It follows, that the greater the proportion of this

class to the whole society, the more free, the more independent, and the more happy must be the society itself.

In appreciating the regular branches of manufacturing and mechanical industry, their tendency must be compared with the principles laid down, and their merits graduated accordingly. Whatever is least favorable to vigor of body, to the faculties of the mind, or to the virtues or the utilities of life, instead of being forced or fostered by public authority, ought to be seen with regret as long as occupations more friendly to human happiness, lie vacant.

The several professions of more elevated pretensions, the merchant, the lawyer, the physician, the philosopher, the divine, form a certain proportion of every civilized society, and readily adjust their numbers to its demands, and its circumstances.

FASHION.[1]

An humble address has been lately presented to the Prince of Wales by the Buckle Manufacturers of Birmingham, Wassal, Wolverhampton, and their environs, stating that the Buckle Trade gives employment to more than Twenty Thousand persons, numbers of whom, in consequence of the prevailing fashion of Shoestrings & Slippers, are at present without employ, almost destitute of bread, and exposed to the horrors of want at the most inclement season; that to the manufactures of Buckles and Buttons, Birmingham owes its important figure on the map of England; that it is to no purpose to address Fashion herself, she being void of feeling and deaf to argument, but fortunately accustomed to listen to his voice, and to obey his commands: and finally *imploring* his Royal Highness to consider the deplorable condition of their trade, which is in danger of being ruined by the *mutability of fashion*, and to give that direction to the *public taste*, which will insure the lasting gratitude of the petitioners.

Several important reflections are suggested by this address.

[1] From *The National Gazette*, March 22, 1792.

I. The most precarious of all occupations which give bread to the industrious, are those depending on mere fashion, which generally changes so suddenly, and often so considerably, as to throw whole bodies of people out of employment.

II. Of all occupations those are the least desirable in a free state, which produce the most servile dependence of one class of citizens on another class. This dependence must increase as the *mutuality* of wants is diminished. Where the wants on one side are the absolute necessaries; and on the other are neither absolute necessaries, nor result from the habitual œconomy of life, but are the mere caprices of fancy, the evil is in its extreme; or if not,

III. The extremity of the evil must be in the case before us, where the absolute necessaries depend on the caprices of fancy, and the caprice of a single fancy directs the fashion of the community. Here the dependence sinks to the lowest point of servility. We see a proof of it in the *spirit* of the address. Twenty thousand persons are to get or go without their bread, as a wanton youth, may fancy to wear his shoes with or without straps, or to fasten his straps with strings or with buckles. Can any despotism be more cruel than a situation, in which the existence of thousands depends on one will, and that will on the most slight and fickle of all motives, a mere whim of the imagination.

IV. What a contrast is here to the independent situation and manly sentiments of American citizens, who live on their own soil, or whose labour is necessary to its cultivation, or who are occupied in supplying wants, which being founded in solid utility, in comfortable accommodation, or in settled habits, produce a reciprocity of dependence, at once ensuring subsistence, and inspiring a dignified sense of social rights.

V. The condition of those who receive employment and bread from the precarious source of fashion and superfluity, is a lesson to nations, as well as to individuals. In proportion as a nation consists of that description of citizens, and depends on external commerce, it is dependent on the con-

sumption and caprice of other nations. If the laws of propriety did not forbid, the manufacturers of Birmingham, Wassal, and Wolverhampton, had as real an interest in supplying the arbiters of fashion in America, as the patron they have addressed. The dependence in the case of nations is even greater than among individuals of the same nation: for besides the *mutability of fashion* which is the same in both, the *mutability of policy* is another source of danger in the former.

PROPERTY.[1]

This term in its particular application means "that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual."

In its larger and juster meaning, it embraces every thing to which a man may attach a value and have a right; and *which leaves to every one else the like advantage.*

In the former sense, a man's land, or merchandize, or money is called his property.

In the latter sense, a man has property in his opinions and the free communication of them.

He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them.

He has property very dear to him in the safety and liberty of his person.

He has an equal property in the free use of his faculties and free choice of the objects on which to employ them.

In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights.

Where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties or his possessions.

Where there is an excess of liberty, the effect is the same, tho' from an opposite cause.

[1] From *The National Gazette*, March 29, 1792.

Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a *just* government, which *impartially* secures to every man, whatever is his *own*.

According to this standard of merit, the praise of affording a just security to property, should be sparingly bestowed on a government which, however scrupulously guarding the possessions of individuals, does not protect them in the enjoyment and communication of their opinions, in which they have an equal, and in the estimation of some, a more valuable property.

More sparingly should this praise be allowed to a government, where a man's religious rights are violated by penalties, or fettered by tests, or taxed by a hierarchy. Conscience is the most sacred of all property; other property depending in part on positive law, the exercise of that, being a natural and inalienable right. To guard a man's house as his castle, to pay public and enforce private debts with the most exact faith, can give no title to invade a man's conscience which is more sacred than his castle, or to withold from it that debt of protection, for which the public faith is pledged, by the very nature and original conditions of the social pact.

That is not a just government, nor is property secure under it, where the property which a man has in his personal safety and personal liberty, is violated by arbitrary seizures of one class of citizens for the service of the rest. A magistrate issuing warrants to a press gang, would be in his proper functions in Turkey or Indostan, under appellations proverbial of the most compleat despotism.

That is not a just government, nor is property secure under it, where arbitrary restrictions, exemptions, and monopolies deny to part of its citizens that free use of their faculties, and free choice of their occupations, which not only constitute their property in the general sense of the word; but are the means of acquiring property strictly so called. What must

be the spirit of legislation where a manufacturer of linen cloth is forbidden to bury his own child in a linen shroud, in order to favour his neighbour who manufactures woolen cloth; where the manufacturer and wearer of woolen cloth are again forbidden the economical use of buttons of that material, in favor of the manufacturer of buttons of other materials!

A just security to property is not afforded by that government under which unequal taxes oppress one species of property and reward another species: where arbitrary taxes invade the domestic sanctuaries of the rich, and excessive taxes grind the faces of the poor; where the keenness and competitions of want are deemed an insufficient spur to labor, and taxes are again applied by an unfeeling policy, as another spur; in violation of that sacred property, which Heaven, in decreeing man to earn his bread by the sweat of his brow, kindly reserved to him, in the small repose that could be spared from the supply of his necessities.

If there be a government then which prides itself on maintaining the inviolability of property; which provides that none shall be taken *directly* even for public use without indemnification to the owner, and yet *directly* violates the property which individuals have in their opinions, their religion, their persons, and their faculties; nay more, which *indirectly* violates their property, in their actual possessions, in the labor that acquires their daily subsistence, and in the hallowed remnant of time which ought to relieve their fatigues and soothe their cares, the inference will have been anticipated, that such a government is not a pattern for the United States.

If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property, and the property in rights: they will rival the government that most sacredly guards the former; and by repelling its example in violating the latter, will make themselves a pattern to that and all other governments.

THE UNION.[1]

Who are its real Friends?

Not those who charge others with not being its friends, whilst their own conduct is wantonly multiplying its enemies.

Not those who favor measures, which by pampering the spirit of speculation within and without the government, disgust the best friends of the Union.

Not those who promote unnecessary accumulations of the debt of the Union, instead of the best means of discharging it as fast as possible; thereby encreasing the causes of corruption in the government, and the pretexts for new taxes under its authority, the former undermining the confidence, the latter alienating the affection of the people.

Not those who study, by arbitrary interpretations and insidious precedents, to pervert the limited government of the Union, into a government of unlimited discretion, contrary to the will and subversive of the authority of the people.

Not those who avow or betray principles of monarchy and aristocracy, in opposition to the republican principles of the Union, and the republican spirit of the people; or who espouse a system of measures more accommodated to the depraved examples of those hereditary forms, than to the true genius of our own.

Not those, in a word, who would force on the people the melancholy duty of chusing between the loss of the Union, and the loss of what the union was meant to secure.

The real Friends to the Union are those,

Who are friends to the authority of the people, the sole foundation on which the Union rests.

Who are friends to liberty, the great end, for which the Union was formed.

Who are friends to the limited and republican system of government, the means provided by that authority, for the attaining of that end.

[1] From *The National Gazette*, April 2, 1792.

Who are enemies to every public measure that might smooth the way to hereditary government; for resisting the tyrannies of which the Union was first planned, and for more effectually excluding which, it was put into its present form.

Who considering a public debt as injurious to the interests of the people, and baneful to the virtue of the government, are enemies to every contrivance for *unnecessarily* increasing its amount, or protracting its duration, or extending its influence.

In a word, those are the real friends to the Union, who are friends to that republican policy throughout, which is the only *cement* for the Union of a republican people; in opposition to a spirit of usurpation and monarchy, which is the *menstruum* most capable of dissolving it.[1]

[1] TO JAMES MADISON.

Ap^{l} 17th 1792

Hon^{D} Sir

Col. Wadsworth [2] of Connecticut wishes to procure a Barrel or half Barrel of the best Peach Brandy, & I have undertaken to use my efforts for the purpose. If it can be got at all it is probably in our neighbourhood. I recollect particularly that Col Geo. Taylor had some that we thought good & which is perhaps to be obtained. If that or any better can be had I shall be glad that one of my brothers would take the trouble of engaging it & having it forwarded. The older the better provided the quality be excellent. If age be wanting, the quality should be such as will be made excellent by age. To secure it against fraud, it is desired that the cask be cased with an outer one; the cask itself to be of wood that will give it no ill taste. The price will not be considered so much as the character of the spirits, it being for the use of the gentleman himself—If no brandy be on hand that will do, perhaps the ensuing fall if the peaches be not destroyed, may supply the defect. In that case it might be well to speak in time to some person & have a barrel distilled with special care for the purpose. The brandy is to be shipped from Fredericksburg addressed to Watson & Greenleaf at New York—for Col. Wadsworth M^{r} Maury or M^{r} Glassell will forward it if sent to either of them. I have nothing to add to the papers enclosed having written a few days ago, & being now in haste.

Y^{r} affe^{c} son.—*Mad. MSS.*

[2] Jeremiah Wadsworth, a representative.

A CANDID STATE OF PARTIES.[1]

As it is the business of the contemplative statesman to trace the history of parties in a free country, so it is the duty of the citizen at all times to understand the actual state of

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SUBSTANCE OF A CONVERSATION WITH THE PRESIDENT, 5TH MAY, 1792.

In consequence of a note this morning from the President, requesting me to call on him I did so; when he opened the conversation by observing, that having some time ago communicated to me his intention of retiring from public life on the expiration of his four years, he wished to advise with me on the *mode* and *time* most proper for making known that intention. He had he said spoken with no one yet on those *particular points*, and took this opportunity of mentioning them to me, that I might consider the matter, and give him my opinion, before the adjournment of Congress, or my departure from Philadelphia. He had he said forborne to communicate his intentions to any other persons whatever, but Mr. Jefferson, Col. Hamilton, General Knox, and myself, and of late to Mr. Randolph. Col. Hamilton and Gen! Knox he observed were extremely importunate that he should relinquish his purpose, and had made pressing representations to induce him to it Mr. Jefferson had expressed his wishes to the like effect. He had not however persuaded himself that his continuance in Public life could be of so much necessity or importance as was conceived, and his disinclination to it was becoming every day more & more fixed; so that he wished to make up his mind as soon as possible on the points he had mentioned. What he desired was to prefer that mode which would be most remote from the appearance of arrogantly presuming on his re-election in case he should not withdraw himself, and such a time as would be most convenient to the Public in making the choice of his successor. It had he said at first occurred to him, that the commencement of the ensuing Session of Congress would furnish him with an apt occasion for introducing the intimation, but besides the lateness of the day, he was apprehensive that it might possibly produce some notice in the reply of Congress that might entangle him in farther explanations.

I replied that I would revolve the subject as he desired and communicate the result before my leaving Philad[a] but that I could not but yet hope there would be no necessity at this time for his decision on the two points he had stated. I told him that when he did me the honor to mention the resolution he had taken, I had forborne to do

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[1] From *The National Gazette*, September 26, 1792.

them. Whenever this duty is omitted, an opportunity is given to designing men, by the use of artificial or nominal distinctions, to oppose and balance against each other those who never differed as to the end to be pursued, and may no

more than briefly express my apprehensions that it would give a surprize and shock to the public mind, being restrained from enlarging on the subject by an unwillingness to express sentiments sufficiently known to him; or to urge objections to a determination, which if absolute, it might look like affectation to oppose; that the aspect which things had been latterly assuming, seemed however to impose the task on all who had the opportunity of urging a continuance of his public services; and that under such an impression I held it a duty, not indeed to express my wishes which would be superfluous, but to offer my opinion that his retiring at the present juncture might have effects that ought not to be hazarded; that I was not unaware of the urgency of his inclination; or of the peculiar motives he might feel to withdraw himself from a situation into which it was so well known to myself he had entered with a scrupulous reluctance; that I well recollected the embarrassments under which his mind labored in deciding the question on which he had consulted me, whether it could be his duty to accept his present station after having taken a final leave of public life; and that it was particularly in my recollection that I then entertained & intimated a wish that his acceptance, which appeared to be indispensable, might be known hereafter to have been in no degree the effect of any motive which strangers to his character might suppose, but of the severe sacrifice which his friends knew, he made of his inclinations as a man, to his obligations as a citizen; that I owned I had at that time contemplated, & I believed, suggested as the most unequivocal tho' not the only proof of his real motive, a voluntary return to private life as soon as the state of the Government would permit, trusting that if any premature casualty should unhappily cut off the possibility of this proof, the evidence known to his friends would in some way or other be saved from oblivion and do justice to his character; that I was not less anxious on the same point now than I was then; and if I did not conceive that reasons of a like kind to those which required him to undertake still required him to retain for some time longer, his present station, or did not presume that the purity of his motives would be sufficiently vindicated, I should be the last of his friends to press, or even to wish, such a determination.

He then entered on a more explicit disclosure of the state of his mind; observing that he could not believe or conceive himself any wise necessary to the successful administration of the Government;

longer differ as to the means of attaining it. The most interesting state of parties in the United States may be referred to three periods: Those who espoused the cause of independence and those who adhered to the British claims, formed

that, on the contrary he had from the beginning found himself deficient in many of the essential qualifications, owing to his inexperience in the forms of public business, his unfitness to judge of legal questions, and questions arising out of the Constitution; that others more conversant in such matters would be better able to execute the trust; that he found himself also in the decline of life, his health becoming sensibly more infirm, & perhaps his faculties also; that the fatigues & disagreeableness of his situation were in fact scarcely tolerable to him; that he only uttered his real sentiments when he declared that his inclination would lead him rather to go to his farm, take his spade in his hand, and work for his bread, than remain in his present situation; that it was evident moreover that a spirit of party in the Government was becoming a fresh source of difficulty, and he was afraid was dividing some (alluding to the Secretary of State and Secy of the Treasury) more particularly connected with him in the administration; that there were discontents among the people which were also shewing themselves more & more, & that altho' the various attacks against public men & measures had not in general been pointed at him, yet in some instances it had been visible that he was the indirect object, and it was probable the evidence would grow stronger and stronger that his return to private life was consistent with every public consideration, and, consequently that he was justified in giving way to his inclination for it.

"I was led by this explanation to remark to him, that however novel or difficult the business might have been to him, it could not be doubted that with the aid of the official opinions & informations within his command his judgment must have been as competent in all cases, as that of any one who could have been put in his place, and in many cases certainly more so; that in the great point of conciliating and uniting all parties under a Govt which had excited such violent controversies & divisions, it was well known that his services had been in a manner essential; that with respect to the spirit of party that was taking place under the operations of the Govt I was sensible of its existence but considered that as an argument for his remaining, rather than retiring, until the public opinion, the character of the Govt, and the course of its administration shd be better decided, which could not fail to happen in a short time, especially under his auspices; that the existing parties did not appear to be so formidable to the Govt as

the parties of the first period; if, indeed, the disaffected class were considerable enough to deserve the name of a party. This state of things was superseded by the treaty of peace in 1783. From 1783 to 1787 there were parties in abundance,

some had represented; that in one party there might be a few who retaining their original disaffection to the Govt might still wish to destroy it, but that they would lose their weight with their associates, by betraying any such hostile purposes; that altho' it was pretty certain that the other were in general unfriendly to republican Govt and probably aimed at a gradual approximation of ours to a mixed monarchy, yet the public sentiment was so strongly opposed to their views, and so rapidly manifesting itself, that the party could not long be expected to retain a dangerous influence; that it might reasonably be hoped therefore that the conciliating influence of a temperate & wise administration would before another term of four years should run out, give such a tone & firmness to the Government as would secure it against danger from either of these descriptions of enemies; that altho' I would not allow myself to believe but that the Govt would be safely administered by any successor elected by the people, yet it was not to be denied that in the present unsettled condition of our young Government, it was to be feared that no successor would answer all the purposes to be expected from the continuance of the present chief magistrate; that the option evidently lay between a few characters; Mr. Adams, Mr. Jay, & Mr. Jefferson were most likely to be brought into view; that with respect to Mr. Jefferson his extreme repugnance to public life & anxiety to exchange it for his farm & his philosophy made it doubtful with his friends whether it would be possible to obtain his own consent; and if obtained, whether local prejudices in the Northern States, with the views of Pennsylvania in relation to the seat of Govt, would not be a bar to his appointment. With respect to Mr. Adams, his monarchical principles, which he had not concealed, with his late conduct on the representation bill, had produced such a settled dislike among republicans every where, & particularly in the Southern States, that he seemed to be out of the question. It would not be in the power of those who might be friendly to his private character & willing to trust him in a public one, notwithstanding his political principles to make head against the torrent. With respect to Mr. Jay his election would be extremely dissatisfactory on several accounts. By many he was believed to entertain the same obnoxious principles with Mr. Adams, & at the same time would be less open and therefore more successful in propagating them. By others (a pretty numerous class) he was disliked & distrusted, as being thought to

but being rather local than general, they are not within the present review.

The Federal Constitution, proposed in the latter year, gave birth to a second and most interesting division of the people.

have espoused the claims of British Creditors at the expence of the reasonable pretensions of his fellow Citizens in debt to them. Among the Western people, to whom his negotiations for ceding the Mississippi to Spain were generally known, he was considered as their most dangerous enemy & held in peculiar distrust & disesteem. In this state of our prospects which was rendered more striking by a variety of temporary circumstances, I could not forbear thinking that altho' his retirement might not be fatal to the public good, yet a postponement of it was another sacrifice exacted by his patriotism.

Without appearing to be any wise satisfied with what I had urged he turned the conversation to other subjects; & when I was withdrawing repeated his request that I would think of the points he had mentioned to me, & let him have my ideas on them before the adjournment. I told him I would do so; but still hoped his decision on the main question would supersede for the present all such incidental questions.

WEDNESDAY EVENING, May 9, 1792

Understanding that the President was to set out the ensuing morning for Mount Vernon, I called on him to let him know that as far as I had formed an opinion on the subject he had mentioned to me, it was in favor of a direct address of notification to the public in time for its proper effect on the election, which I thought might be put into such a form as would avoid every appearance of presumption or indelicacy, and seemed to be absolutely required by his situation. I observed that no other mode deserving consideration had occurred, except the one he had thought of & rejected, which seemed to me liable to the objections that had weighed with him. I added that if on farther reflection I shd view the subject in any new lights, I would make it the subject of a letter tho' I retained my hopes that it would not yet be necessary for him to come to any opinion on it. He begged that I would do so, and also suggest any matters that might occur as proper to be included in what he might say to Congress at the opening of their next Session; passing over the idea of his relinquishing his purpose of retiring in a manner that did not indicate the slightest assent to it.

FRIDAY, May 25, 1792.

I met the President on the road returning from Mount Vernon to Philada, when he handed me the letter dated at the latter place on the

Every one remembers it, because every one was involved in it.

Among those who embraced the constitution, the great body were unquestionably friends to republican liberty; tho'

20th of May,[1] the copy of the answer to which on the 21st of June is annexed.—*Mad. MSS.*

COPY OF A LETTER TO PRESIDENT WASHINGTON.

ORANGE June 21, 1792.

DEAR SIR

Having been left to myself for some days past, I have made use of the opportunity for bestowing on your letter of the 20th Ult, handed to me on the road, the attention which its important contents claimed. The questions which it presents for consideration are—1. at what time a notification of your purpose to retire will be most convenient? 2 what mode will be most eligible? 3 whether a valedictory address will be requisite or advisable? 4. if either, whether it would be more properly annexed to the notification or postponed to your actual retirement.

[1] The answer to the first question involves two points: first the expediency of delaying the notification; secondly the propriety of making it before the choice of electors takes place, that the people may make the choice with an eye to the circumstances under which the trust is to be executed. On the first point, the reasons for as much delay as possible are too obvious to need recital. The second, depending on the times fixed in the several States which must be within 34 days preceding the first wednesday in December, requires that the notification should be in time to pervade every part of the Union, by the beginning of November. Allowing six weeks for this purpose, the middle of September, or perhaps a little earlier would seem a convenient date for the act.

2. With regard to the mode, none better occurs than a simple

[1] The letter said he had not been able to dispose his mind to a longer continuance in office. He looked forward to the fulfilment of his fondest and most ardent wishes to spend the remainder of his days in ease and tranquillity. Nothing short of conviction that dereliction of the chair of state by him would involve the country in serious disputes, could in any wise induce him to relinquish the determination he had formed. He wished Madison to suggest the proper time and mode of announcing his intention, and to prepare the form of the latter; and turn his thoughts to the form of a valedictory address to the public.—Ford's *Writings of Washington*, xii., 123.

there were, no doubt, some who were openly or secretly attached to monarchy and aristocracy; and hoped to make the constitution a cradle for these hereditary establishments. Among those who opposed the constitution, the great body

publication in the newspapers. If it were proper to address it through the medium of the general Legislature, there will be no opportunity. Nor does the change of situation seem to admit a recurrence to the State Gov^ts^, which were the channels used for the former valedictory address. A direct address to the people who are your only constituents can be made I think with most propriety, thro' the independent channel of the press, thro' which they are as a constituent Body usually addressed.

3. On the third question I think there can be no doubt that such an address is rendered *proper* in itself by the peculiarity & importance of the circumstances which mark your situation; and *advisable* by the salutary & operative lessons of which it may be made the vehicle. The precedent at your military exit might also subject an omission now to conjectures & interpretations which it would not be well to leave room for.

4. The remaining question is less easily decided. Advantages & objections lie on both sides of the alternative. The occasion on which you are *necessarily* addressing the people evidently introduces, most easily & most delicately, any *voluntary* observations that are meditated. In another view a farewell address before the final moment of departure is liable to the appearance of being premature & awkward. On the opposite side of the alternative however a postponement will beget a dryness & an abridgement in the first address little corresponding with the feelings which the occasion would naturally produce both in the author & the objects of it; and tho' not liable to the above objection, would require a resumption of the subject apparently more forced, and on which the impressions having been anticipated & familiarized, and the public mind diverted perhaps to other scenes, a second address would be received with less sensibility & effect than if incorporated with the impressions incident to the original one. It is possible too that previous to the close of the term, circumstances might intervene in relation to public affairs, or the succession to the Presidency which would be more embarrassing, if existing at the time of a valedictory appeal to the public, than if unknown at the time of that delicate measure.

On the whole my judgment leans to the propriety of blending the acts together; and the more so as the crisis which will terminate your public career will still afford an opportunity, if any immediate con-

were certainly well affected to the union and to good government, tho' there might be a few who had a leaning unfavourable to both. This state of parties was terminated by the regular and effectual establishment of the federal government

tingency sh[d] call for a supplement to your farewell observations. But as more correct views of the subject, may produce a different result in your mind, I have endeavored to fit the draught inclosed to either determination. You will readily observe that in executing it, I have arrived at that plainness & modesty of language which you had in view, & which indeed are so peculiarly becoming the character & the occasion; & that I have had, little more to do as to the matter than to follow the very just & comprehensive outline which you had sketched. I flatter myself, however, that in every thing which has depended on me, much improvement will be made before so interesting a paper shall have taken its last form.

Having thus, Sir, complied with your wishes, by proceeding on a supposition that the idea of retiring from public life is to be carried into execution, I must now gratify my own by hoping that a reconsideration of the measure, in all its circumstances and consequences will have produced an acquiescence in one more sacrifice, severe as it may be, to the desires & interests of your country. I forbear to enter into the arguments which plead for it, in my mind, because it would be only repeating what I have already taken the liberty of fully explaining. But I could not conclude such a letter as the present without a repetition of my ardent wishes & hopes that our country may not at this important conjuncture be deprived of the inestimable advantage of having you at the head of its Counsels. J. M Jr.

[*Draught enclosed in the above.*]

The period which will close the appointment with which my fellow-citizens have honored me, being not very distant, and the time actually arrived at which their thoughts must be designating the Citizen who is to administer the Executive Government of the U. S. during the ensuing term, it may be requisite to a more distinct expression of the public voice that I should apprize such of my fellow Citizens as may retain their partiality towards me, that I am not to be numbered among those out of whom a choice is to be made.

I beg them to be assured that the resolution which dictates this intimation has not been taken without the strictest regard to the relation which as a dutiful citizen I bear to my country; and that in withdrawing that tender of my service which silence in my situation might imply, I am not influenced by the smallest deficiency of zeal for

in 1788; out of the administration of which, however, has arisen a third division, which being natural to most political societies, is likely to be of some duration in ours.

One of the divisions consists of those, who from particular

its future interests, or of grateful respect for its past kindness; but by the fullest persuasion, that such a step is compatible with both.

The impressions under which I entered on the present arduous trust were explained on the proper occasion. In discharge of this trust, I can only say, that I have contributed towards the organization & administration of the Government the best exertions of which a very fallible judgment was capable. For any errors which may have flowed from this source, I feel all the regret which an anxiety for the public good can excite; not without the double consolation however arising from a consciousness of their being involuntary, and an experience of the candor which will interpret them. If there were any circumstances which could give value to my inferior qualifications for the trust, these circumstances must have been temporary. In this light was the undertaking viewed when I ventured upon it. Being moreover still farther advanced into the decline of life, I am every day more sensible that the increasing weight of years, renders the private walks of it in the shade of retirement as necessary as they will be acceptable to me. May I be allowed to add, that it will be among the highest as well as the purest enjoyments that can sweeten the remnant of my days, to partake in a private station in the midst of my fellow Citizens, of that benign influence of good laws under a free Government which has been the ultimate object of all our wishes, and in which I confide as the happy reward of our cares & labors. (May I be allowed further to add as a consideration far more important, that an early example of rotation in an office of so high & delicate a nature may equally accord with the republican spirit of our constitution & the ideas of liberty & safety entertained by the people.)

(If a farewell address is to be added at the expiration of the term, the following paragraph may conclude the present:)

Under these circumstances, a return to my private station according to the purpose with which I quitted it, is the part w^ch^ duty as well as inclination assigns me. In executing it I shall carry with me every tender recollection which gratitude to my fellow Citizens can awaken; and a sensibility to the permanent happiness of my country that will render it the object of my unceasing vows and most fervent supplications.

(Should no further address be intended, the preceding clause may be omitted, & the present address proceed as follows:)

interest, from natural temper, or from the habits of life, are more partial to the opulent than to the other classes of society; and having debauched themselves into a persuasion that mankind are incapable of governing themselves, it follows

In contemplating the moment at which the curtain is to drop forever on the public scenes of my life, my sensations anticipate & do not permit me to suspend, the deep acknowledgments required by that debt of gratitude which I owe to my beloved country for the many honors it has conferred on me, for the distinguished confidence it has reposed in me, and for the opportunities I have thus enjoyed of testifying my inviolable attachment by the most stedfast services which my faculties could render. All the returns I have now to make will be in those vows which I shall carry with me to my retirement & to my grave, that Heaven may continue to favor the people of the U. S. with the choicest tokens of its beneficence; that their union & brotherly affection may be perpetual; that the free constitution, which is the work of their own hands, may be sacredly maintained; that its administration in every Department may be stamped with wisdom & with virtue, & that this character may be ensured to it by that watchfulness over public servants & public measures which on one hand will be necessary to prevent or correct a degeneracy; and that forbearance on the other, from unfounded or indiscriminate jealousies which would deprive the public of the best services by depriving a conscious integrity of one of the noblest incitements to perform them; that, in fine, the happiness of the people of America under the auspices of liberty may be made compleat, by so careful a preservation & so prudent a use of this blessing as will acquire them the glorious satisfaction of recommending it to the affection, the praise, & the adoption of every nation which is yet a stranger to it.

And may we not dwell with well-grounded hopes on this flattering prospect, when we reflect on the many ties by which the people of America are bound together, & the many proofs they have given of an enlightened judgment and a magnanimous patriotism.

We may all be considered as the children of one common country. We have all been embarked in one common cause. We have all had our share in common sufferings & common successes. The portion of the earth allotted for the Theatre of our fortunes fulfils our most sanguine desires. All its essential interests are the same; whilst the diversities arising from climate, from soil, & from other local & lesser peculiarities, will naturally form a mutual relation of the parts that must give to the whole a more entire independence, than has perhaps fallen to the lot of any other nation.

To confirm these motives to an affectionate & permanent Union &

with them, of course, that government can be carried on only by the pageantry of rank, the influence of money and emoluments, and the terror of military force. Men of those sentiments must naturally wish to point the measures of gov-

to secure the great objects of it, we have established a common Government, which being free in its principles, being founded in our own choice, being intended as the guardian of our common rights & the patron of our common interests, & wisely containing within itself a provision for its own amendment as experience may point out its errors, seems to promise everything that can be expected from such an institution; and if supported by wise counsels, by virtuous conduct, & by mutual & friendly allowances, must approach as near to perfection as any human work can aspire, & nearer than any which the annals of mankind have recorded.

With these wishes & hopes I shall make my exit from civil life, and I have taken the same liberty of expressing them which I formerly used in offering the sentiments which were suggested by my exit from military life. If, in either instance I have presumed more than I ought on the indulgence of my fellow citizens, they will be too generous to ascribe it to any other cause, than the extreme solicitude which I am bound to feel, & which I can never cease to feel, for their liberty their prosperity & their happiness.[1]—*Mad. MSS.*

TO EDMUND RANDOLPH.

ORANGE Sept[r] 13, 1792.

MY DEAR FRIEND

Your favor of the 12 Ult having arrived during an excursion into Albemarle, I did not receive it till my return on yesterday. I lose not

1 Washington put this letter away, having concluded to serve as President for a second term, and five years later made it the basis of a part of the first draft of his Farewell Address. He sent the draft to Hamilton, who sent him another draft, upon which he built the Address finally adopted. Its first paragraph, announcing his purpose to retire, was substantially as in Madison's draft; so was the second, promising continued zeal for the country's welfare. The fifth and sixth were similar to the Madison draft. The expressions in the draft in favor of the Union and the government appeared in the Address in different form. Everything in the draft was in the Address, but the Address had fifty paragraphs and the draft only nine, nor can any of the striking features of the Address be attributed to Madison.—Hunt's *Life of Madison*, 220.

ernment less to the interest of the many than of a few, and less to the reason of the many than to their weaknesses; hoping perhaps in proportion to the ardor of their zeal, that by giving such a turn to the administration, the government

a moment in thanking you for it, particularly for the very friendly paragraph in the publication in Fenno's paper. As I do not get his paper here, it was by accident I first saw this extraordinary manouvre of calumny, the quarter, the motive, and the object of which speak of themselves. As it respects Mr. Jefferson I have no doubt that it will be of service both to him & the public, if it should lead to such an investigation of his political opinions and character as may be expected. With respect to myself the consequence in a public view, is of little account. In any view, there could not have been a charge founded on a grosser perversion of facts, & consequently against which I could feel myself more invulnerable.

That I wished & recommended Mr. Freneau to be appd. to his present Clerkship is certain. But the Department of State was not the only, nor as I recollect the first one to which I mentioned his name & character. I was governed in these recommendations by an acquaintance of long standing, by a respect for his talents, & by a knowledge of his merit & sufferings in the course of the revolution. Had I been less abstemious in my practice from solicitations in behalf of my friends, I should probably have been more early in thinking of Mr. F. The truth is, that my application when made did not originate with myself. It was suggested by another Gentleman [1] who could feel no motive but a disposition to patronize merit, & who wished me to co-operate with him. That with others of Mr. Freneau's particular acquaintances I wished & advised him to establish a press at Philadª instead of one meditated by him in N Jersey, is also certain, I advised the change because I thought his interest would be advanced by it, & because as a friend I was desirous that his interest should be advanced. This was my primary & governing motive. That as a consequential one, I entertained hopes that a free paper meant for general circulation, and edited by a man of genius of republican principles, & a friend to the Constitution, would be some antidote to the doctrines & discourses circulated in favour of Monarchy and Aristocracy & would be an acceptable vehicle of public information in many places not sufficiently supplied with it, this also is a certain truth; but it is a truth which I never could be tempted to conceal, or wish to be concealed. If there be a temptation in the case, it would be to make a merit of it.

But that the establishment of Mr. F's press was wished in order to

[1] Henry Lee.

itself may by degrees be narrowed into fewer hands, and approximated to an hereditary form.

The other division consists of those who believing in the doctrine that mankind are capable of governing themselves, and hating hereditary power as an insult to the reason and an outrage to the rights of man, are naturally offended at every public measure that does not appeal to the understanding and to the general interest of the community, or that is not strictly conformable to the principles, and conducive to the preservation of republican government.

sap the Constitution, and that I forwarded the measure, or that my agency negociated it by an illicit or improper connection between the functions of a translating Clerk in a public office, & those of an Editor of a Gazette, these are charges which ought to be as impotent as they are malicious. The first is surely incredible, if any charge could be so; & the second is I hope at least improbable, & not to be credited, until unequivocal proof shall be substituted for anonymous & virulent assertions.

When I first saw the publication I was half disposed to meet it with a note to the printer, with my name subscribed. I was thrown into suspense however by reflecting that as I was not named, & was only incidentally brought into view, such a step might be precipitate, if not improper, in case the principal should not concur in such a mode of vindication. 2. that I was not enough acquainted with the turn the thing might take, and the light in which it might be viewed on the spot. 3. that in a case the least doubtful, prudence would not rush into the newspapers. These considerations have been since sanctioned by the opinion of two or three judicious & neutral friends whom I have consulted. The part finally proper however remains to be decided and on that I shall always be thankful for the ideas of my friends most in a condition to judge.[1]—*Mad. MSS.*

[1] The first attacks on the administration by *The National Gazette* began December 8, 1791, in a piece signed "Americanus," and were continued thereafter till it ceased to appear, October, 1793, soon after Jefferson left the cabinet. Washington himself was always spared by Freneau. August 16, 1791, Freneau was appointed a translator in the State Department at a salary of $250 per annum, which was half the amount paid the regular clerks. The *Gazette* did not disclose any secrets of government, and showed no facilities for information greater than any one not in government service might have had.

This being the real state of parties among us, an experienced and dispassionate observer will be at no loss to decide on the probable conduct of each.

The anti republican party, as it may be called, being the weaker in point of numbers, will be induced by the most obvious motives to strengthen themselves with the men of influence, particularly of moneyed, which is the most active and insinuating influence. It will be equally their true policy to weaken their opponents by reviving exploded parties, and taking advantage of all prejudices, local, political, and occupational, that may prevent or disturb a general coalition of sentiments.

The republican party, as it may be termed, conscious that the mass of people in every part of the union, in every state, and of every occupation must at bottom be with them, both in interest and sentiment, will naturally find their account in burying all antecedent questions, in banishing every other distinction than that between enemies and friends to republican government, and in promoting a general harmony among the latter, wherever residing, or however employed.

Whether the republican or the rival party will ultimately establish its ascendance, is a problem which may be contemplated now; but which time alone can solve. On one hand experience shows that in politics as in war, stratagem is often an overmatch for numbers; and among more happy characteristics of our political situation, it is now well understood that there are peculiarities, some temporary, others more durable, which may favour that side in the contest. On the republican side, again, the superiority of numbers is so great, their sentiments are so decided, and the practice of making a common cause, where there is a common sentiment and common interest, in spight of circumstantial and artificial distinctions, is so well understood, that no temperate observer of human affairs will be surprised if the issue in the present instance should be reversed, and the government be administered in the spirit and form approved by the great body of the people.

WHO ARE THE BEST KEEPERS OF THE PEOPLE'S LIBERTIES? [1]

Republican.—The people themselves.—The sacred trust can be no where so safe as in the hands most interested in preserving it.

Anti-republican.—The people are stupid, suspicious, licentious. They cannot safely trust themselves. When they have established government they should think of nothing but obedience, leaving the care of their liberties to their wiser rulers.

Republican.—Although all men are born free, and all nations might be so, yet too true it is, that slavery has been the general lot of the human race. Ignorant—they have been cheated; asleep—they have been surprized; divided—the yoke has been forced upon them. But what is the lesson? that because the people *may* betray themselves, they ought to give themselves up, blindfold, to those who have an interest in betraying them? Rather conclude that the people ought to be enlightened, to be awakened, to be united, that after establishing a government they should watch over it, as well as obey it.

Anti-republican.—You look at the surface only, where errors float, instead of fathoming the depths where truth lies hid. It is not the government that is disposed to fly off

[1] From *The National Gazette*, December 20, 1792. This was the last of Madison's contributions to the *Gazette*. He left a volume of the paper, marking with his initials those which he wrote. Mr. Rives, in his *Life and Times of Madison*, iii., 250, n., gives a list of the articles which is slightly inaccurate.

TO EDMUND PENDLETON.

PHILAD[A], Dec[r] 6, 1792.

DEAR SIR

I am just favored with yours of the 28th Ult. I wish I could remove your anxiety for the French. The last accounts are so imperfect & contradictory that it is difficult to make anything of them. They come also thro' the Brussels & English channels, which increases the uncertainty. It appears on the whole that the combination ag[st] the revolution, and particularly ag[st] their new Republic, is extremely

from the people; but the people that are ever ready to fly off from the government. Rather say then, enlighten the government, warn it to be vigilant, enrich it with influence,

formidable, and that there is still greater danger within from the follies and barbarities which prevail in Paris. On the other hand it seems tolerably clear that the nation is united against Royalty, and well disposed to second the Government in the means of defence. At this distance it is impossible to appreciate particular measures, or foresee the turn which things may finally take.

The Newspaper tax noticed by the P. has been referred to a Com^e^ but no report has yet been made. It is of great importance that some change should take place that will remove the obstruction which has been thrown in the way of information to the people. In all Gov^ts^ the public censorship is necessary in order to prevent abuses. In such an one as ours, where the members are so far removed from the eye of their Constituents, an easy & prompt circulation of public proceedings is peculiarly essential.

The election of a vice P. has excited in this quarter considerable animation and called forth comparative portraits of the political characters of Mr. Adams & Gov^r^ Clinton the only candidates brought into the field. The former has been exhibited in all its monarchical features; and the latter in the anti federal colors it wore in 1788. There are not sufficient data here to calculate with certainty the event of the contest. The probability is rather favorable to Mr. A; but not in such a degree as to prevent pretty keen apprehensions among his friends. As the opposition to him is levelled entirely ag^st^ his political principles, and is made under very great disadvantages, the extent of it, whether successful or not, will satisfy him that the people at large are not yet ripe for his system.

We are informed by the last advices from Europe that the harvest has generally been scanty, & that in England, particularly it has suffered prodigiously from the wetness of the season. From this cause, and the general state of things abroad, a great demand on our stock is anticipated. Wheat is already up at 9*s*, & flour at 45*s* of this currency. The rise must soon communicate itself to Virginia & it is to be hoped the farmers will not lose the benefit of it by premature sales. We all regret the detention of Col. Taylor. I hope the cause of it has ceased & that we shall soon have his arrival in proof of it. It is probable that Mr. Jefferson will not remain very long in his public station; but it is certain that his retirement is not to be ascribed to the Newspaper calumnies which may have had that in view. With the greatest affection I remain, D^r^ sir, Y^rs^—*Mad. MSS.*

arm it with force, and to the people never pronounce but two words—*Submission* and *Confidence*.

Republican.—The centrifugal tendency then is in the people, not in the government, and the secret art lies in restraining the tendency, by augmenting the attractive principle of the government with all the weight that can be added to it. What a perversion of the natural order of things! to make *power* the primary and central object of the social system, and *Liberty* but its satellite.

Anti-republican.—The science of the stars can never instruct you in the mysteries of government. Wonderful as it may seem, the more you increase the attractive force of power, the more you enlarge the sphere of liberty; the more you make government independent and hostile towards the people, the better security you provide for their rights and interests. Hence the wisdom of the theory, which, after limiting the share of the people to a third of the government, and lessening the influence of that share by the mode and term of delegating it, establishes two grand hereditary orders, with feelings, habits, interests, and prerogatives all inveterately hostile to the rights and interests of the people, yet by a *mysterious* operation all combining to fortify the people in both.

Republican.—Mysterious indeed!—But mysteries belong to religion, not to government; to the ways of the Almighty, not to the works of man. And in religion itself there is nothing mysterious to its author; the mystery lies in the dimness of the human sight. So in the institutions of man let there be no mystery, unless for those inferior beings endowed with a ray perhaps of the twilight vouchsafed to the first order of terrestrial creation.

Anti-republican.—You are destitute, I perceive, of every quality of a good citizen, or rather of a good *subject*. You have neither the light of faith nor the spirit of obedience. I denounce you to the government as an accomplice of atheism and anarchy.

Republican.—And I forbear to denounce you to the people, though a blasphemer of their rights and an idolater of tyranny. —Liberty disdains to persecute.

Dec. 20.

TO EDMUND PENDLETON. MAD. MSS.

PHILAD^A, Feb^Y 23, 1793.

DEAR SIR

Since we had the pleasure of Col. Taylor's arrival I have left in his better hands the trust of keeping you supplied with whatever communications might interest or amuse you. As the political scene here, is however soon to be suspended, I cannot refuse myself the last opportunity I shall have before a dispersion of the dramatis personæ takes place, of enjoying the pleasure I always feel in tendering my respects & affection, as well as testifying the high value I set on your correspondence.

I seize the opportunity in this case with the more avidity, as it permits me at the same time, to tell you how much we have been charmed with the successor to Col. R. H. L.[1] & to entreat your co-operation with a number of his other friends in overcoming his repugnance to his present station. His talents during the fraction of time he has been on the federal theatre have been of such infinite service to the republican cause, and such a terror to its adversaries, that his sudden retirement, on which he is strongly bent, ought to be regarded as a public calamity, and counterworked by all the means his friends can use.

[1] John Taylor of Caroline, an uncompromising state rights man, who succeeded Lee in the Senate.

We think it essential that he should be prevailed on to prolong his stay in the Gov^t^ at least through the next session, which will form a critical epoch in our political History. Much will depend on the turn our affairs will then take; and that will depend not a little on the character which Virginia in particular will exhibit in the National Councils. In this view it is to be desired that her weight of talents in one branch sh^d^ correspond with her force of numbers in the other. The figure she is to make in the latter with respect to talents will depend on the issue of the approaching elections. We understand in general that there will be no scarcity of competitors; but our information is too defective for an accurate conjecture of the result. Your district has been said to abound more than any other in candidates. Mr. C.[1] I presume is most distinguished for parliamentary talents and activity, and on that score claims a favorable wish, if the course he would be likely to take should furnish no objection, of which those most in the knowledge of his politics are the best judges.

You will have discovered from the Newspapers that a pretty interesting scrutiny has been started into the administration of the Treas^y^ Department.[2] The documents furnished shew that there has been

[1] Samuel Jordan Cabell, who was elected to the fourth Congress.

[2] Proposed by Giles of Virginia, but instigated by Madison, and supported by him in a speech, March 1. The hatred between Hamilton and Madison was of a year's standing. Its cause is fully explained in Hamilton's letter to Edward Carrington, March 26, 1792. Hamilton's *Works* (Lodge), viii., 205.

at least a very blameable irregularity & secrecy in some particulars of it, and many appearances which at least require explanation. With some, suspicions are carried very far; others resolve the whole that is wrong into favoritism to the Bank, &c. whilst the partizans of the Fisc. either see nothing amiss, or are willing to ascribe everything that is so to venial, if not laudable motives.

The Jan^{y} Packet has just arrived at N. Y. Her budget is not yet fully opened to the public. The Gov^{t} of Eng^{d} it is said remains firm in the saddle notwithstanding the spurs which Mr. Payne has so vigorously applied to the people. Whether a war is to be forced with France is still uncertain; tho' the affirmative is most countenanced by individual opinions. The arms of France continue to maintain their reputation. She is threatened with a further trial of them by all the efforts that Austria & Prussia at least can make. Spain is disposed to be neutral; but would fain make the preservation of Louis a condition. You will find by the inclosed paper that his fate must ere this have been decided by an appeal to the judgment of the Nation.

With every sentiment of esteem & attachment I am D^{r} sir Y^{rs}

TO J. M. ROLAND.[1] CHIC. HIST. SOC. MSS.

VIRGINIA, April 1793.

SIR

I have recd your letter of the 10th of Oct. accompanying the decree of the National Assembly of the

[1] Minister of the Interior of the French Republic.

26th of Aug. last; which confers the title of French Citizen on several foreigners among whom I have the honor to be named.

In the catalogue of sublime truths and precious sentiments recorded in the revolution of France, none is more to be admired than the renunciation of those prejudices which have perverted the artificial boundaries of nations into exclusions of the philanthropy which ought to cement the whole into one great family. The recitals of the act which you communicate contain the best comment on the great principle of humanity: and in proportion as they speak the magnanimity of the French nation, must claim the gratitude and affection of the individuals so honorably adopted into her citizenship. For myself I feel these sentiments with all the force which that reflection can inspire; and I present them with peculiar satisfaction as a citizen of the U. S. which have born so signal a part towards banishing prejudices from the world and reclaiming the lost rights of mankind; and whose public connection with France is endeared by the affinities of their mutual liberty, and the sensibility testified by the citizens of each country to every event interesting to the fortunes of the other.

To this tribute of respectful affection, I beg leave to add my anxious wishes for all the prosperity and glory to the French Nation which can accrue from an example corresponding with the dignified maxims they have established and compleated the triumphs of Liberty by a victory over the minds of all its adversaries.

Be pleased, Sir, to accept acknowledg[ment] due to the sentiments you have personally expressed in transmitting the public act with which you were charged.

TO THOMAS JEFFERSON. MAD. MSS.

ORANGE May 8th, 1793.

DEAR SIR

Your last rec[d] was of the 28 Ap[l] The rec[t] of all the preceding is verified by the uninterrupted dates of the Gazettes inclosed. I anxiously wish that the reception of Genest may testify what I believe to be the real affections of the people. It is the more desirable as a seasonable plum after the bitter pills which it seems must be administered. Having neither the Treaty nor Law of Nations at hand I form no opinion as to the stipulations of the former, or the precise neutrality defined by the latter.[1] I

[1] The President's proclamation of neutrality had appeared April 22. Madison wrote to Jefferson, June 10:

"Every Gazette I see (except that of the U. S.) exhibits a spirit of criticism on the anglified complexion charged on the Executive politics. I regret extremely the position into which the P. has been thrown. The unpopular cause of Anglomany is openly laying claim to him. His enemies masking themselves under the popular cause of France are playing off the most tremendous batteries on him. The proclamation was in truth a most unfortunate error. It wounds the national honor, by seeming to disregard the stipulated duties to France. It wounds the popular feelings by a seeming indifference to the cause of liberty. And it seems to violate the forms & spirit of the Constitution, by making the executive Magistrate the organ of the disposition the duty & the interest of the Nation in relation to War & peace, subjects appropriated to other departments of the Government. It is mortifying to the real friends of the P. that his fame & his influence should have been unnecessarily made to depend in any degree on political events in a foreign quarter of the Globe; and particularly

had always supposed that the terms of the Treaty made some sort of difference, at least as far as would consist with the Law of Nations, between France & Nations not in Treaty, particularly G. Britain. I should still doubt whether the term *impartial*, in the Proclamation, is not stronger than was necessary, if not than was proper. Peace is no doubt to be preserved at any price that honor and good faith will permit. But it is no less to be considered that the least departure from these will not only be most likely to end in the loss of peace, but is pregnant with every other evil that could happen to us. In explaining our own engagements under the Treaty with France, it would be honorable as well as just to adhere to the sense that would at the time have been put on them. The attempt to shuffle off the Treaty altogether by quibbling on Vattel is equally contemptible for the meanness & folly of it. If a change of Gov^{t} is an absolution from public engagements, why not from those of a domestic as well as of a foreign nature; and what then becomes of public debts &c &c. In fact, the doctrine would perpetuate every existing Despotism, by involving in a reform of the Gov^{t} a destruction of the social pact, an annihilation of property, and a compleat establishment of the state of Nature. What most surprises me is, that such a proposition *sh^{d} have been discussed.*

so that he should have anything to apprehend from the success of liberty in another country, since he owes his pre-eminence to the success of it in his own. If France triumphs, the ill-fated proclamation will be a millstone, which would sink any other character, and will force a struggle even on his."—*Mad. MSS.*

Our weather has not been favorable of late, owing more to want of sun, than excess of rain. Vegetation of all sorts even the wheat, nevertheless continues to flourish; and the fruit having no longer anything to fear from frost, we are sure of good crops of that agreeable article.

Y^rs^ Always & aff^y^

Will you send me a copy of the little pamphlet advertised under the title of an Examination of the proceedings in the case of the Sec^y^ of the Trea^y^?

TO THOMAS JEFFERSON. MAD. MSS.

[ORANGE] May 27, 1793

DEAR SIR

I have rec^d^ your letter, with the unsealed one for Monroe & have forwarded the latter. Your subsequent one, which I calculate to have been written on the 12th inst, came to hand two days ago. I feel for your situation but you must bear it. Every consideration private as well as public requires a further sacrifice of your longings for the repose of Monticello, you must not make your final exit from public life till it will be marked with justifying circumstances which all good citizens will respect, & to which your friends can appeal. At the present crisis, what would the former think, what could the latter say? The real motives, whatever they might be would either not be admitted or could not be explained; and if they should be viewed as satisfactory at a future day, the intermediate effects

would not be lessened & could not be compensated. —I am anxious to see what reception Genest will find in Philad[a]. I hear that the fiscal party in Alex[a] was an over match for those who wished to testify the American sentiment. George Town it is said repaired the omission. A public dinner was intended for him at Fredericksburg, but he passed with such rapidity that the compliment miscarried. It would not be amiss, if a knowledge of this would in a proper mode get to him. I think it certain that he will be misled if he takes either the fashionable cant of the Cities or the cold caution of the Gov[t] for the sense of the public; and I am equally persuaded that nothing but the habit of implicit respect will save the Executive from blame if thro' the mask of Neutrality, a secret Anglomany should betray itself. I forgot when I requested your attention to my plows, to ask the favor of you to pay for them & to let me know the amount of your several advances. . . .

Yours always & aff[ey]

TO THOMAS JEFFERSON. MAD. MSS.

ORANGE June 13, 93.

. . . . . .

I observe that the newspapers continue to criticise the President's proclamation, and I find that some of the criticisms excite the attention of dispassionate & judicious individuals here.[1] I have heard it re-

[1] Madison's partisanship saw wrong where none existed. The proclamation said the "duty and interest of the United States" required impartial conduct towards the belligerents and declared it to be "the disposition of the United States" to observe such conduct.

marked by such, with some surprise that the P. should have declared the U. S. to be neutral in the unqualified terms used, when we were so notoriously & unequivocally under *eventual engagements* to defend the American possessions of F. I have heard it remarked also that the impartiality enjoined on the people was as little reconcileable with their moral obligations, as the unconditional neutrality proclaimed by the Government is with the express articles of the Treaty. It has been asked also whether the authority of the Executive extended by any part of the Constitution to a declaration of the *Disposition* of the U. S. on the subject of war & peace? I have been mortified that on these points I could offer no bona fide explanations that ought to be satisfactory. On the last point I must own my surprise that such a prerogative should have been exercised. Perhaps I may have not attended to some parts of the Constitution with sufficient care, or may have misapprehended its meaning. But, as I have always supposed & still conceive a proclamation on the subject could not properly go beyond a declaration of the fact that the U. S. were at war or peace, and an injunction of a suitable conduct on the Citizens. The right to decide the question whether the duty & interest of the U. S. require war or peace under any given circumstances, and whether their disposition be towards the one or the other seems to be essentially & exclusively involved in the right vested in the Legislature, of declaring war in time of peace; and in the P. & S. of making peace

in time of war. Did no such view of the subject present itself in the discussions of the Cabinet? I am extremely afraid that the P. may not be sufficiently aware of the snares that may be laid for his good intentions by men whose politics at bottom are very different from his own. An assumption of prerogatives not clearly found in the Constitution & having the appearance of being copied from a Monarchical model, will beget animadversion equally mortifying to him & disadvantageous to the Government. Whilst animadversions of this sort can be plausibly ascribed to the spirit of party, the force of them may not be felt. But all his real friends will be anxious that his public conduct may bear the strictest scrutiny of future times as well as of the present day; and all such friends of the Constitution would be doubly pained at infractions of it under auspices that may consecrate the evil till it be incurable.

It will not be in my power to take the step with the Friend of our Friend which you recommend.[1] It is probable too that it would be either unnecessary or without effect. If the complexion of the former be such as is presumed, he will fairly state the truth & that alone is wanted. If as I deem not impossible, his complexion be a little different from the

[1] "Have you time & the means of impressing Wilson Nicholas (who will be much with E. R.), with the necessity of giving him a strong & perfect understanding of the public mind?"—Jefferson to Madison, June 2, 1793. Jefferson's *Writings* (Ford), vi., 278.

Edmund Randolph had been sent to Virginia by Washington to find out the disposition of the state towards Genet's activities.

general belief, there would be more harm than good in the attempt. The great danger of misconstruing the sentiment of Virginia with regard to Liberty & France is from the heretical tone of conversation in the Towns on the post roads. The voice of the Country is universally and warmly right. If the popular disposition could be collected & carried into effect, a most important use might be made of it in obtaining contributions of the necessaries called for by the danger of famine in France. Unfortunately the disaffection of the Towns which alone could give effect to a plan for the purpose, locks up the public gratitude & beneficence. . . .

TO THOMAS JEFFERSON. MAD. MSS.

ORANGE June 17, 1793

. . . . . .

I fell in two days ago with French Strother, who was returning circuitously from Richmond. He had seen W. C. Nicholas on his way, & spoke of him as among the decided friends of the French cause. In general I discovered that his testimony and conviction corroborated the fact that the people of this country, where you cannot trace the causes of particular exceptions, are unanimous & explicit in their sympathy with the Revolution. He was in Richmond during the session of the Court of the U. S., and heard the opinions of the Judges on the subject of the British debts. Jay's he says was that the depreciated paym^{ts} into the Treasury discharged the

debtor, but leaves the State liable to the creditor. It would be a hard tax on those who have suffered themselves by the depreciation to bear such a burden. It would be severely felt by those who put money into the Treasury on loan & have received certificates by the scale, & those again further reduced by the modifications of the assumption. I asked S. who told me he was under the same roof with Jay & a good deal in his society, what language he held on French topics. He never opened his lips, was the answer. In Fred^g^ on his way to Richmond, he was less reserved. I understood that in a conversation there with Mr. Page who was full of zeal on the side of France, his enmity broke out in a very decided tone. . . .

My imagination has hunted thro' this whole state without being able to find a single character fitted for the mission to N. O.[1] Young Marshal seems to possess some of the qualifications, but there would be objections of several sorts to him. In general the men of understanding in this country are either preoccupied or too little acquainted with the world in the sense necessary for such functions. As a mercantile mask would be politic, the difficulty of providing a man here is the greater. . . .

[1] Projected in connection with the negotiations with Spain then pending. John Marshall was thirty-eight years old.

TO THOMAS JEFFERSON. MAD. MSS.

July 18, 1793

. . . . . .

I have read over the subject [1] which you recommend to my attention. It excites equally surprise & indignation, and ought certainly to be taken notice of by some one who can do it justice. In my present disposition which is perfectly alienated from such things, and in my present situation which deprives me of some material facts and many important lights, the task would be in bad hands if I were otherwise better qualified for it. I am in hopes of finding that some one else has undertaken it. In the mean time I will feel my own pulse and if nothing appears, may possibly try to supply the omission. Return my thanks to Doc[r] Logan for the pamphlet & also for the plows arrived at Fred[g], tho' by a singular succession of errors & accidents, they lie still on the road between this and that. Your acc[t] of G—[Genet] is dreadful. He must be brought right if possible. His folly will otherwise do mischief which no wisdom can repair. Is there no one through whom he can be *effectually* counselled. D[e] L[a] F[orest] is said to be able, and if himself rightly disposed as I have understood him to be, might perhaps be of great use.

. . . . . .

[1] The letters of Pacificus (Hamilton.)

TO THOMAS JEFFERSON. MAD. MSS.

July 22, 1793

DEAR SIR

My last was on the 18th, and acknowledged yours of the 30th Ult: & 7th instant. I had not then time to mention that W. C. Nicholas pass[d] an evening with me on his way home from his brother's where he had met Ed Randolph on his return to Ph[a]. From his conversation, his sentiments are right & firm on the French Revol[n], and In other respects I discovered no symptoms of heresy. He spoke particularly & emphatically of the unquestionable unanimity of the Country in favor of the cause of F. I have no doubt that he held this language to every one, and consequently that the impressions depending on him have been rightly made. I could not but infer from all that he said with regard to E. R. that he considered the sentiments of him on French affairs as similar to his own, and to such as were expressed by himself. Some allowance however in all such conversations, must be made for the politeness or policy of respecting the known sentiments of the party to which they are addressed or communicated. He had seen the first part of H's publication [1] and spoke of it as from that quarter. He expressed some surprise at the doctrines & cabinet efforts of the Author as he had learnt them from E. R., and seemed unable to account for some things without suspecting H. of a secret design to commit and sacrifice the P[t]. His ideas on this subject must have

[1] Pacificus. (Note in Madison's hand.)

grown out of the language of E. R., if not actually copied from it. I have read over with some attention, the *printed* papers you inclosed, and have made notes towards a discussion of the subject. I find myself however under some difficulties first from my not knowing how far concessions have been made on particular points behind the curtain.[1] 2dly. from my not knowing how far the P. considers himself as actually committed with respect to some doctrines. 3dly. from the want of some lights from the Law of Nations as applicable to the construction of the Treaty. 4th. from my ignorance of some material facts,—such as whether any call was made by G. B. or any other Belligerent power for the intentions of the U. S. prior to the Proclamation—whether F. was heard on the subject of her constructions & pretensions under the Treaty—whether the Ex. had before them any authentic documents or entered into any discussions, on the question whether the war between F. & G. B. is offensive or defensive &c: I do not mean that all such information ought to be brought into the controversy, tho' some of it is necessary & some more might be used to advantage. But all or most of it seems proper in order to avoid vulnerable assertions or suppositions which might give occasion to triumphant replies. If an answer to the Publication be undertaken, it ought to be both a solid, and a prudent one. None but intelligent readers will enter into such a controversy, and to

[1] "I think it is better you should not know them," was Jefferson's reply. See his letter, August 3.—*Writings* (Ford), vi., 361.

their minds it ought principally to be accommodated. If you can lay your hands on the Explanatory publication of the real object of the Proclam[n] referred to in your last, or the preceding one, send it to me. The one I had is no longer in my hands.—I expect to day to receive your letter next in date to the 7th.

LETTERS OF HELVIDIUS.[1]

August–September.

NO. 1.

Several pieces with the signature of PACIFICUS were lately published, which have been read with singular pleasure and applause, by the foreigners and degenerate citizens among

[1] Pacificus (Alexander Hamilton) defended the proclamation of neutrality in eight articles in the Gazette of the United States, the last one appearing July 27. Jefferson was so alarmed at the effect they were producing that he wrote Madison, July 7: "Nobody answers him & his doctrines will therefore be taken for confessed. For God's sake, my dear Sir, take up your pen, select the most striking heresies and cut him to pieces in the face of the public. There is nobody else who can & will enter the lists against him." (*Writings*, vi., 338.) Madison's five articles under the name Helvidius appeared in the same paper on the following dates: No. 1, August 24; No. 2, August 28, and September 11; No. 3, September 7; No. 4, September 14; and No. 5, September 18. The interest in the articles was extraordinary because there was no doubt who the real authors were. Madison's arguments were chiefly directed against Hamilton's first paper which unfolded his idea of the powers of the Executive. He had when he began to write the articles the intention of meeting all of Hamilton's arguments, but he abandoned the task. All the letters were reprinted in 1845 by J. and G. S. Gideon (Washington) and in the *Writings of Hamilton* (Lodge), iv., 135, seven of the Pacificus papers are given.

TO THOMAS JEFFERSON.

July 30, 1793.

. . . As I intimated in my last I have forced myself into the task of a reply. I can truly say I find it the most grating one I ever

us, who hate our republican government, and the French revolution; whilst the publication seems to have been too

experienced; and the more so as I feel at every step I take the want of counsel on some points of delicacy as well as of information as to sundry matters of fact. I shall be still more sensible of the latter want when I get to the attack on French proceedings, & perhaps to the last topic proposed by the writer, if I ever do get to it. As yet I have but roughly and partially gone over the first; & being obliged to proceed in scraps of time, with a distaste to the subject, and a distressing lassitude from the excessive & continued heat of the season, I cannot say when I shall finish even that. One thing that particularly vexes me is that I foreknow from the prolixity & pertinacity of the writer, that the business will not be terminated by a single fire, and of course that I must return to the charge in order to prevent a triumph without a victory.[1]

Do you know what is the idea of France with regard to the defensive quality of the Guaranty; and of the criterion between offensive & defensive war which I find differently defined by different jurists; also what are the ideas of the P. on these points. I could lay my course with more advantage thro' some other parts of the subject if I could also know how far he considers the Procl[n] as expressing a neutrality in the sense given to that term, or how far he approves the vindication of it on that ground.

I am sorry to find the journey to Virg[a] [2] from which useful lessons were hoped, ending in a confirmation of errors. I can only account for it by supposing the public sentiment to have been collected from tainted sources, w[ch] ought to have suggested to a cautious & unbiassed mind the danger of confiding in them. The body of the people are unquestionably attached to the Union, and friendly to the Constitution; but that they have no dissatisfaction at the measures & spirit of the Government, I consider as notoriously untrue. I am the more surprised at the misconception of our Friend as the two latest sources consulted, the two brothers [3] I mean, are understood to be both of them rightly disposed as well as correctly informed.—*Mad. MSS.*

TO THOMAS JEFFERSON.

Augst 5 93

. . . Your acc[t] of the ticklish situation with respect to Genet in the 14[th] is truly distressing. His folly would almost beget suspicions of the worst sort. The consequences you point out in case

1 Hamilton did not reply.

2 By Edmund Randolph.

3 George and Wilson Cary Nicholas.

little regarded, or too much despised by the steady friends to both.

Had the doctrines inculcated by the writer, with the natural consequences from them, been nakedly presented to the public, this treatment might have been proper. Their true character would then have struck every eye, and been rejected by the feelings of every heart. But they offer themselves to the reader in the dress of an elaborate dissertation;

matters come to an extremity are so certain & obvious that it is hardly conceivable he can be blind to them. Something must be done if possible to get him into a better train. I find by the paper of the 27, that Pacificus has entered & I suppose closed his last topic. I think it a feeble defence of one important point I am striking at: viz., the making a declaration *in his sense of it*, before the arrival of Genet. I argue that the Act does not import a decision agst the cas: fed: from the manifest impropriety of doing so on the ground that France was the aggressor in *every* war, without at least waiting for evidence as to the question of fact who made the first attack admitting for the sake of arg^{t} that to be the intention. A difficulty has occurred which will retard my remarks more than I expected. They must be prepared for the *same Gazette* consequently copied into another hand. I am laying a plan for hav^{g} it done here, but it cannot be done as quickly as I wish.—*Mad. MSS.*

TO THOMAS JEFFERSON.

Augst 11, 03

The task on which you have put me, must be abridged so as not to go beyond that period. You will see that the first topic is not yet compleated. I hope the 2^{d}, & 3^{d}, to wit the mean^{g} of the Treaty & the obligations of gratitude will be less essential. The former is particularly delicate; and tho' I think it may be put in a light that w^{d} reflect ignominy on the author of P., yet I had rather not meddle with the subject if it c^{d} be avoided. I cannot say when I shall be able to take up those two parts of the job. Just as I was embarking in the general subject I rec^{d} from the reputed Author of Franklyn a large pamphlet written by him agst the fiscal system, particularly the Bank; which I could not but attend to. It is put on a footing that requires me to communicate personally with Monroe, whom I ought to have seen before this, as the publication of the work is to be contrived for the Author. It really has merit, always for its ingenuity, generally for its solidity, and is enriched with many fine strokes of imagination, and a continued vein of pleasantry & keen satire, that

they are mingled with a few truths that may serve them as a passport to credulity; and they are introduced with professions of anxiety for the preservation of peace, for the welfare of the government, and for the respect due to the present head of the executive, that may prove a snare to patriotism.

In these disguises they have appeared to claim the attention I propose to bestow on them: with a view to show, from the publication itself, that under colour of vindicating an

will sting deeply. I have rec^{d} a letter from the Author, wishing to hear from me. I must therefore take a ride as far as Charlottesville as soon as I make out the next packet for you, and suspend the residue of the business till I return. I shall endeavour in my absence to fulfill a promise to Wilson Nicholas which will lengthen the suspension. I forw^{d} to F. a copy of the little thing of L^{d} Ch.; the last sentence is struck out as not necessary, and which may perhaps wound too indiscriminately certain characters not at present interested in supporting public corruptions. . . .

The paper for J. F. could not otherwise get to him than with your aid. You must therefore take the trouble of having it handed into the post office whence the penny post will take it, unless you can do it at some shorter hand. I wish you would look over what is s^{d} critically, and if you think there be any thing of importance wrong, or that may do more harm than good, that you will either erase it, where that will not break the sense, or arrest the whole till I can make the correction. Delay I know is bad; but vulnerable parts that w^{d} be seized for victories & triumphs would be worse. I beg you also to attend particularly to those passages slightly marked with a pencil. the first, the declaration of the principles & sentiments of the Author—the 2^{d}, beginning with, "Writers such as Locke & Montesquieu &c. to the pencil mark in the ¶. 3^{d} the quotation from the Federalist. If you think the first had better be omitted it can come out without leav^{g} the least gap—so can the 2^{d} my doubts as to that proceed from the danger of turning the controversy too much into the wilderness of Books. I use Montesquieu also, from memory, tho I believe with^{t} inaccuracy—The 3^{d} can also come out with^{t} affecting the piece; and I wish you to erase it if you think the most scrupulous delicacy, conjecturing the author, c^{d} disapprove it. One N° more or 2 short Nos will close the first topic and supersede the last. They will be sent as soon as finished & copied. These w^{d} have been sent somewhat sooner, but for the delay caused by the last circumstance. . . .— *Mad. MSS.*

important public act, of a chief magistrate who enjoys the confidence and love of his country, principles are advanced which strike at the vitals of its constitution, as well as at its honour and true interest.

As it is not improbable that attempts may be made to apply insinuations, which are seldom spared when particular purposes are to be answered, to the author of the ensuing observations, it may not be improper to premise, that he is a friend to the constitution, that he wishes for the preservation of peace, and that the present chief magistrate has not a fellow-citizen, who is penetrated with deeper respect for his merits, or feels a purer solicitude for his glory.

This declaration is made with no view of courting a more favourable ear to what may be said than it deserves. The sole purpose of it is, to obviate imputations which might weaken the impressions of truth; and which are the more likely to be resorted to, in proportion as solid and fair arguments may be wanting.

The substance of the first piece, sifted from its inconsistencies and its vague expressions, may be thrown into the following propositions:

That the powers of declaring war and making treaties are, in their nature, executive powers:

That being particularly vested by the constitution in other departments, they are to be considered as exceptions out of the general grant to the executive department:

That being, as exceptions, to be construed strictly, the powers not strictly within them, remain with the executive.

That the executive consequently, as the organ of intercourse with foreign nations, and the interpreter and executor of treaties, and the law of nations, is authorized to expound all articles of treaties, those involving questions of war and peace, as well as others;—to judge of the obligations of the United States to make war or not, under any *casus fœderis* or eventual operation of the contract, relating to war; and

to pronounce the state of things resulting from the obligations of the United States, as understood by the executive:

That in particular the executive had authority to judge, whether in the case of the mutual guaranty between the United States and France, the former were bound by it to engage in the war:

That the executive has, in pursuance of that authority, decided that the United States are not bound:—And

That its proclamation of the 22nd of April last, is to be taken as the effect and expression of that decision.

The basis of the reasoning is, we perceive, the extraordinary doctrine, that the powers of making war, and treaties, are in their nature executive; and therefore comprehended in the general grant of executive power, where not especially and strictly excepted out of the grant.

Let us examine this doctrine: and that we may avoid the possibility of mistaking the writer, it shall be laid down in his own words; a precaution the more necessary, as scarce any thing else could outweigh the improbability, that so extravagant a tenet should be hazarded at so early a day, in the face of the public.

His words are—"Two of these [exceptions and qualifications to the executive powers] have been already noticed—the participation of the senate in the *appointment of officers*, and the *making of treaties*. A *third* remains to be mentioned—the right of the legislature to *declare war, and grant letters of marque and reprisal*."

Again—"It deserves to be remarked, that as the participation of the senate in the *making of treaties*, and the power of the legislature to *declare war*, are *exceptions* out of the general *executive power*, vested in the president; they are to be construed *strictly*, and ought to be extended no further than is *essential* to their execution."

If there be any countenance to these positions, it must be found either, first, in the writers of authority on public law; or, 2d, in the quality and operation of the powers to make

war and treaties; or, 3d, in the constitution of the United States.

1. It would be of little use to enter far into the first source of information, not only because our own reason and our own constitution, are the best guides; but because a just analysis and discrimination of the powers of government, according to their executive, legislative, and judiciary qualities, are not to be expected in the works of the most received jurists, who wrote before a critical attention was paid to those objects, and with their eyes too much on monarchical governments, where all powers are confounded in the sovereignty of the prince. It will be found, however, I believe, that all of them, particularly Wolsius, Burlemaqui, and Vatel, speak of the powers to declare war, to conclude peace, and to form alliances, as among the highest acts of the sovereignty; of which the legislative power must at least be an integral and preeminent part.

Writers, such as Locke, and Montesquieu, who have discussed more the principles of liberty and the structure of government, lie under the same disadvantage, of having written before these subjects were illuminated by the events and discussions which distinguish a very recent period. Both of them, too, are evidently warped by a regard to the particular government of England, to which one of them owed allegiance[1]; and the other professed an admiration bordering on idolatry. Montesquieu, however, has rather distinguished himself by enforcing the reasons and the importance of avoiding a confusion of the several powers of government, than by enumerating and defining the powers which belong to each particular class. And Locke, notwithstanding the early date of his work on civil government, and the example of his own government before his eyes, admits that the particular powers in question, which, after some of the writers on public law he calls *federative*, are really *distinct* from the

[1] The chapter on prerogative shows, how much the reason of the philosopher was clouded by the royalism of the Englishman.

executive, though almost always united with it, and *hardly to be separated into distinct hands*. Had he not lived under a monarchy, in which these powers were united; or had he written by the lamp which truth now presents to lawgivers, the last observation would probably never have dropped from his pen. But let us quit a field of research which is more likely to perplex than to decide, and bring the question to other tests of which it will be more easy to judge.

2. If we consult, for a moment, the nature and operation of the two powers to declare war and to make treaties, it will be impossible not to see, that they can never fall within a proper definition of executive powers. The natural province of the executive magistrate is to execute laws, as that of the legislature is to make laws. All his acts, therefore, properly executive, must presuppose the existence of the laws to be executed. A treaty is not an execution of laws: it does not presuppose the existence of laws. It is, on the contrary, to have itself the force of a *law*, and to be carried into *execution*, like all *other laws*, by the *executive magistrate*. To say then that the power of making treaties, which are confessedly laws, belongs naturally to the department which is to execute laws, is to say, that the executive department naturally includes a legislative power. In theory this is an absurdity—in practice a tyranny.

The power to declare war is subject to similar reasoning. A declaration that there shall be war, is not an execution of laws: it does not suppose pre-existing laws to be executed: it is not, in any respect, an act merely executive. It is, on the contrary, one of the most deliberate acts that can be performed; and when performed, has the effect of *repealing* all the *laws* operating in a state of peace, so far as they are inconsistent with a state of war; and of *enacting*, as a *rule for the executive*, *a new code* adapted to the relation between the society and its foreign enemy. In like manner, a conclusion of peace *annuls* all the *laws* peculiar to a state of war, and *revives* the general *laws* incident to a state of peace.

These remarks will be strengthened by adding, that treaties, particularly treaties of peace, have sometimes the effect of changing not only the external laws of the society, but operate also on the internal code, which is purely municipal, and to which the legislative authority of the country is of itself competent and complete.

From this view of the subject it must be evident, that although the executive may be a convenient organ of preliminary communications with foreign governments, on the subjects of treaty or war; and the proper agent for carrying into execution the final determinations of the competent authority; yet it can have no pretensions, from the nature of the powers in question compared with the nature of the executive trust, to that essential agency which gives validity to such determinations.

It must be further evident, that if these powers be not in their nature purely legislative, they partake so much more of that, than of any other quality, that under a constitution leaving them to result to their most natural department, the legislature would be without a rival in its claim.

Another important inference to be noted is, that the powers of making war and treaty being substantially of a legislative, not an executive nature, the rule of interpreting exceptions strictly must narrow, instead of enlarging, executive pretensions on those subjects.

3. It remains to be inquired, whether there be any thing in the constitution itself, which shows, that the powers of making war and peace are considered as of an executive nature, and as comprehended within a general grant of executive power.

It will not be pretended, that this appears from any *direct* position to be found in the instrument.

If it were *deducible* from any particular expressions, it may be presumed, that the publication would have saved us the trouble of the research.

Does the doctrine, then, result from the actual distribu-

tion of powers among the several branches of the government? or from any fair analogy between the powers of war and treaty, and the enumerated powers vested in the executive alone?

Let us examine:

In the general distribution of powers, we find that of declaring war expressly vested in the congress, where every other legislative power is declared to be vested; and without any other qualification than what is common to every other legislative act. The constitutional idea of this power would seem then clearly to be, that it is of a legislative and not an executive nature.

This conclusion becomes irresistible, when it is recollected, that the constitution cannot be supposed to have placed either any power legislative in its nature, entirely among executive powers, or any power executive in its nature, entirely among legislative powers, without charging the constitution, with that kind of intermixture and consolidation of different powers, which would violate a fundamental principle in the organization of free governments. If it were not unnecessary to enlarge on this topic here, it could be shown, that the constitution was originally vindicated, and has been constantly expounded, with a disavowal of any such intermixture.

The power of treaties is vested jointly in the president and in the senate, which is a branch of the legislature. From this arrangement merely, there can be no inference that would necessarily exclude the power from the executive class: since the senate is joined with the president in another power, that of appointing to offices, which, as far as relate to executive offices at least, is considered as of an executive nature. Yet on the other hand, there are sufficient indications that the power of treaties is regarded by the constitution as materially different from mere executive power, and as having more affinity to the legislative than to the executive character.

One circumstance indicating this, is the constitutional

regulation under which the senate give their consent in the case of treaties. In all other cases, the consent of the body is expressed by a majority of voices. In this particular case, a concurrence of two-thirds at least is made necessary, as a substitute or compensation for the other branch of the legislature, which, on certain occasions, could not be conveniently a party to the transaction.

But the conclusive circumstance is, that treaties, when formed according to the constitutional mode, are confessedly to have force and operation of *laws*, and are to be a rule for the courts in controversies between man and man, as much as any *other laws*. They are even emphatically declared by the constitution to be "the supreme law of the land."

So far the argument from the constitution is precisely in opposition to the doctrine. As little will be gained in its favour from a comparison of the two powers, with those particularly vested in the president alone.

As there are but few, it will be most satisfactory to review them one by one.

"The president shall be commander in chief of the army and navy of the United States, and of the militia when called into the actual service of the United States."

There can be no relation worth examining between this power and the general power of making treaties. And instead of being analogous to the power of declaring war, it affords a striking illustration of the incompatibility of the two powers in the same hands. Those who are to *conduct a war* cannot in the nature of things, be proper or safe judges, whether *a war ought* to be *commenced*, *continued*, or *concluded*. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws.

"He may require the opinion in writing of the principal officers in each of the executive departments upon any subject relating to the duties of their respective offices; and he

shall have power to grant reprieves and pardons for offences against the United States, except in case of impeachment." These powers can have nothing to do with the subject.

"The president shall have power to fill up vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of the next session." The same remark is applicable to this power, as also to that of "receiving ambassadors, other public ministers, and consuls." The particular use attempted to be made of this last power will be considered in another place.

"He shall take care that the laws shall be faithfully executed, and shall commission all officers of the United States." To see the laws faithfully executed constitutes the essence of the executive authority. But what relation has it to the power of making treaties and war, that is, of determining what the *laws shall be* with regard to other nations? No other certainly than what subsists between the powers of executing and enacting laws; no other, consequently, than what forbids a coalition of the powers in the same department.

I pass over the few other specified functions assigned to the president, such as that of convening the legislature, &c., &c., which cannot be drawn into the present question.

It may be proper however to take notice of the power of removal from office, which appears to have been adjudged to the president by the laws establishing the executive departments; and which the writer has endeavoured to press into his service. To justify any favourable inference from this case, it must be shown, that the powers of war and treaties are of a kindred nature to the power of removal, or at least are equally within a grant of executive power. Nothing of this sort has been attempted, nor probably will be attempted. Nothing can in truth be clearer, than that no analogy, or shade of analogy, can be traced between a power in the supreme officer responsible for the faithful execution of the laws, to displace a subaltern officer employed in the execution of the laws; and a power to make treaties and to

declare war, such as these have been found to be in their nature, their operation, and their consequences.

Thus it appears that by whatever standard we try this doctrine, it must be condemned as no less vicious in theory than it would be dangerous in practice. It is countenanced neither by the writers on law; nor by the nature of the powers themselves; nor by any general arrangements, or particular expressions, or plausible analogies, to be found in the constitution.

Whence then can the writer have borrowed it?

There is but one answer to this question.

The power of making treaties and the power of declaring war, are *royal prerogatives* in the *British government*, and are accordingly treated as *executive prerogatives* by *British commentators*.

We shall be the more confirmed in the necessity of this solution of the problem, by looking back to the area of the constitution, and satisfying ourselves that the writer could not have been misled by the doctrines maintained by our own commentators on our own government. That I may not ramble beyond prescribed limits, I shall content myself with an extract from a work which entered into a systematic explanation and defence of the constitution; and to which there has frequently been ascribed some influence in conciliating the public assent to the government in the form proposed. Three circumstances conspire in giving weight to this cotemporary exposition. It was made at a time when no application to *persons or measures* could bias: the opinion given was not transiently mentioned, but formally and critically elucidated: it related to a point in the constitution which must consequently have been viewed as of importance in the public mind. The passage relates to the power of making treaties; that of declaring war, being arranged with such obvious propriety among the legislative powers, as to be passed over without particular discussion.

"Though several writers on the subject of government place that power [*of making treaties*] in the class of *executive*

authorities, yet this is *evidently* an *arbitrary disposition*. For if we attend *carefully* to its operation, it will be found to partake *more* of the *legislative* than of the *executive* character, though it does not seem strictly to fall within the definition of either of them. The essence of the legislative authority, is to enact laws; or, in other words, to prescribe rules for the regulation of the society: while the execution of the laws and the employment of the common strength, either for this purpose, or for the common defence, seem to comprise *all* the functions of the *executive magistrate*. The power of making treaties is *plainly* neither the one nor the other. It relates neither to the execution of the subsisting laws, nor to the enaction of new ones, and still less to an exertion of the common strength. Its objects are contracts with foreign nations, which have the *force of law*, but derive it from the obligations of good faith. They are not rules prescribed by the sovereign to the subject, but agreements between sovereign and sovereign. The power in question seems therefore to form a distinct department, and to belong properly neither to the legislative nor to the executive. The qualities elsewhere detailed as indispensable in the management of foreign *negotiations*, point out the executive as the most fit agent in those transactions; whilst the vast importance of the trust, and the operation of treaties *as laws*, plead strongly for the participation of the whole or a part of the *legislative body*, in the office of making them."—*Federalist*, p. 418.[1]

It will not fail to be remarked on this commentary, that whatever doubts may be started as to the correctness of its reasoning against the legislative nature of the power to make treaties; it is *clear*, *consistent*, and *confident*, in deciding that the power is *plainly* and *evidently* not an *executive power*.

NO. II.

The doctrine which has been examined is pregnant with inferences and consequences against which no ramparts in

[1] No. 75, written by Mr. Hamilton.

the constitution could defend the public liberty or scarcely the forms of republican government. Were it once established that the powers of war and treaty are in their nature executive; that so far as they are not by strict construction transferred to the legislature, they actually belong to the executive; that of course all powers not less executive in their nature than those powers, if not granted to the legislature, may be claimed by the executive; if granted, are to be taken *strictly*, with a residuary right in the executive; or, as will hereafter appear, perhaps claimed as a concurrent right by the executive; and no citizen could any longer guess at the character of the government under which he lives; the most penetrating jurist would be unable to scan the extent of constructive prerogative.

Leaving however to the leisure of the reader deductions which the author, having omitted, might not choose to own, I proceed to the examination of one, with which that liberty cannot be taken.

"However true it may be, (says he,) that the right of the legislature to declare war *includes the right of judging*, whether the legislature be under obligations to make war or not, it will not follow that the executive is *in any case* excluded from a *similar right* of judging in the execution of its own functions."

A material error of the writer, in this application of his doctrine, lies in his shrinking from its regular consequences. Had he stuck to his principle in its full extent, and reasoned from it without restraint, he would only have had to defend himself against his opponents. By yielding the great point, that the right to declare war, *though to be taken strictly*, includes the right to judge, whether the nation be under obligation to make war or not, he is compelled to defend his argument, not only against others, but against himself also. Observe, how he struggles in his own toils.

He had before admitted, that the right to declare war is vested in the legislature. He here admits, that the right to

declare war includes the right to judge, whether the United States be obliged to declare war or not. Can the inference be avoided, that the executive, instead of having a similar right to judge, is as much excluded from the right to judge as from the right to declare?

If the right to declare war be an exception out of the general grant to the executive power, every thing included in the right must be included in the exception; and, being included in the exception, is excluded from the grant.

He cannot disentangle himself by considering the right of the executive to judge as *concurrent* with that of the legislature: for if the executive have a concurrent right to judge, and the right to judge be included in (it is in fact the very essence of) the right to declare, he must go on and say, that the executive has a concurrent right also to declare. And then, what will he do with his other admission, that the power to declare is an exception out of the executive power?

Perhaps an attempt may be made to creep out of the difficulty through the words, "in the execution of its functions." Here, again, he must equally fail.

Whatever difficulties may arise in defining the executive authority in particular cases, there can be none in deciding on an authority clearly placed by the constitution in another department. In this case, the constitution has decided what shall not be deemed an executive authority; though it may not have clearly decided in every case what shall be so deemed. The declaring of war is expressly made a legislative function. The judging of the obligations to make war, is admitted to be included as a legislative function. Whenever, then, a question occurs, whether war shall be declared, or whether public stipulations require it, the question necessarily belongs to the department to which those functions belong—and no other department can be *in the execution of its proper functions*, if it should undertake to decide such a question.

There can be no refuge against this conclusion, but in the pretext of a *concurrent* right in both departments to judge

of the obligations to declare war; and this must be intended by the writer, when he says, "It will not follow, that the executive is excluded *in any case* from a *similar right* of judging," &c.

As this is the ground on which the ultimate defence is to be made, and which must either be maintained, or the works erected on it demolished; it will be proper to give its strength a fair trial.

It has been seen, that the idea of a *concurrent* right is at variance with other ideas, advanced or admitted by the writer. Laying aside, for the present, that consideration, it seems impossible to avoid concluding, that if the executive, as such, has a concurrent right with the legislature to judge of obligations to declare war, and the right to judge be essentially included in the right to declare, it must have the same concurrent right to declare, as it has to judge; and, by another analogy, the same right to judge of other causes of war, as of the particular cause found in a public stipulation. So that whenever the executive, *in the course of its functions*, shall meet with these cases, it must either infer an equal authority in all, or acknowledge its want of authority in any.

If any doubt can remain, or rather if any doubt could ever have arisen, which side of the alternative ought to be embraced, it can be with those only who overlook or reject some of the most obvious and essential truths in political science.

The power to judge of the causes of war, as involved in the power to declare war, is expressly vested, where all other legislative powers are vested, that is, in the congress of the United States. It is consequently determined by the constitution to be a *legislative power*. Now, omitting the inquiry here, in what respects a compound power may be partly legislative, and partly executive, and accordingly vested *partly* in the one, and *partly* in the other department, or *jointly* in both; a remark used on another occasion is equally conclusive on this, that the same power cannot belong, *in the whole* to *both* departments, or be properly so vested as to

operate *separately* in *each*. Still more evident is it, that the same *specific function or act*, cannot possibly belong to the *two* departments, and be *separately* exerciseable by *each*.

Legislative power may be *concurrently* vested in different legislative bodies. Executive powers may be concurrently vested in different executive magistrates. In legislative acts the executive may have a participation, as in the qualified negative on the laws. In executive acts, the legislature, or at least a branch of it, may participate, as in the appointment to offices. Arrangements of this sort are familiar in theory, as well as in practice. But an independent exercise of an *executive act* by the legislature *alone*, or of a *legislative* act by the executive *alone*, one or other of which must happen in every case where the same act is exerciseable by each, and the latter of which would happen in the case urged by the writer, is contrary to one of the first and best maxims of a well-organized government, and ought never to be founded in a forced construction, much less in opposition to a fair one. Instances, it is true, may be discovered among ourselves, where this maxim has not been faithfully pursued; but being generally acknowledged to be errors, they confirm, rather than impeach the truth and value of the maxim.

It may happen also, that different independent departments, the legislative and executive, for example, may, in the exercise of their functions, interpret the constitution differently, and thence lay claim to the same power. This difference of opinion is an inconvenience not entirely to be avoided. It results from what may be called, if it be thought fit, a *concurrent* right to expound the constitution. But this *species* of concurrence is obviously and radically different from that in question. The former supposes the constitution to have given the power to one department only; and the doubt to be, to which it has been given. The latter supposes it to belong to both; and that it may be exercised by either or both, according to the course of exigencies.

A concurrent authority in two independent departments,

to perform the same function with respect to the same thing, would be as awkward in practice, as it is unnatural in theory.

If the legislature and executive have both a right to judge of the obligations to make war or not, it must sometimes happen, though not at present, that they will judge differently. The executive may proceed to consider the question to-day; may determine that the United States are not bound to take part in a war, and, *in the execution of its functions*, proclaim that determination to all the world. To-morrow, the legislature may follow in the consideration of the same subject; may determine that the obligations impose war on the United States, and, *in the execution of its functions* enter into a *constitutional declaration*, expressly contradicting the *constitutional proclamation.*

In what light does this present the constitution to the people who established it? In what light would it present to the world a nation, thus speaking, through two different organs, equally constitutional and authentic, two opposite languages, on the same subject, and under the same existing circumstances?

But it is not with the legislative rights alone that this doctrine interferes. The rights of the judiciary may be equally invaded. For it is clear that if a right declared by the constitution to be legislative, and actually vested by it in the legislature, leaves, notwithstanding, a similar right in the executive, whenever a case for exercising it occurs, *in the course of its functions;* a right declared to be judiciary and vested in that department may, on the same principle, be assumed and exercised by the executive *in the course of its functions;* and it is evident that occasions and pretexts for the latter interference may be as frequent as for the former. So again the judiciary department may find equal occasions in the execution of *its* functions, for usurping the authorities of the executive; and the legislature for stepping into the jurisdiction of both. And thus all the powers of government, of which a partition is so carefully made among the several

branches, would be thrown into absolute hotchpot, and exposed to a general scramble.

It is time however for the writer himself to be heard, in defence of his text. His comment is in the words following:

"If the legislature have a right to make war on the one hand, it is, on the other, the duty of the executive to preserve peace, till war is declared; and in fulfilling that duty, it must necessarily possess a right of judging what is the nature of the obligations which the treaties of the country impose on the government; and when, in pursuance of this right, it has concluded that there is nothing inconsistent with a state of neutrality, it becomes both its province and its duty to enforce the laws incident to that state of the nation. The executive is charged with the execution of all laws, the laws of nations, as well as the municipal law which recognises and adopts those laws. It is consequently bound, by faithfully executing the laws of neutrality, when that is the state of the nation, to avoid giving a cause of war to foreign powers."

To do full justice to this masterpiece of logic, the reader must have the patience to follow it step by step.

If the legislature have a right to make war on the one hand, it is, on the other, the duty of the executive to preserve peace till war is declared.

It will be observed that here is an explicit and peremptory assertion, that it is the *duty* of the executive *to preserve peace* till *war is declared.*

And in fulfilling that duty it must necessarily possess a right of judging what is the nature of the obligations which the treaties of the country impose on the government; That is to say, in fulfilling *the duty to preserve peace*, it must necessarily possess the right to judge whether *peace ought to be preserved;* in other words, *whether its duty should be performed.* Can words express a flatter contradiction? It is self-evident that the *duty* in this case is so far from *necessarily implying the right*, that it *necessarily excludes it.*

And when in pursuance of this right it has concluded that

there is nothing in them (obligations) inconsistent with a state of neutrality, IT BECOMES both its province and its duty to enforce the laws incident to that state of the nation.

And what if it should conclude that there is something inconsistent? Is it or is it not the province and duty of the executive to enforce the same laws? Say it is, you destroy the right to judge. Say it is not, you cancel the duty to preserve peace, till war is declared.

Take this sentence in connexion with the preceding, and the contradictions are multiplied. Take it by itself, and it makes the right to judge and conclude, whether war be obligatory, absolute and operative; and the duty to preserve peace subordinate and conditional.

It will have been remarked by the attentive reader, that the term *peace* in the first clause has been silently exchanged in the present one for the term *neutrality*. Nothing however is gained by shifting the terms. Neutrality means peace, with an allusion to the circumstances of other nations being at war. The term has no reference to the existence or non-existence of treaties or alliances between the nation at peace and the nations at war. The laws incident to a state of neutrality, are the laws incident to a state of peace, with such circumstantial modifications only as are required by the new relation of the nations at war: until war therefore be duly authorized by the United States, they are as *actually* neutral when other nations are at war, as they are at peace (if such a distinction in the terms is to be kept up) when other nations are not at war. The existence of *eventual* engagements which can only take effect on the declaration of the legislature, cannot, without that declaration, change the *actual* state of the country, any more in the eye of the executive than in the eye of the judiciary department. The laws to be the guide of both, remain the same to each, and the same to both.

Nor would more be gained by allowing the writer to define, than to shift the term neutrality. For suppose, if you please, the existence of obligations to join in war to be inconsistent

with neutrality, the question returns upon him, what laws are to be enforced by the executive, until effect shall be given to those obligations by the declaration of the legislature? Are they to be the laws incident to those obligations, that is, incident to war? However strongly the doctrines or deductions of the writer may tend to this point, it will not be avowed. Are the laws to be enforced by the executive, then, in such a state of things, to be the *same* as if no such obligations existed? Admit this, which you must admit, if you reject the other alternative, and the argument lands precisely where it embarked—in the position, that it is the absolute duty of the executive in *all* cases to preserve peace till war is declared, not that it is "*to become* the province and duty of the executive" after it has concluded that there is nothing in those obligations inconsistent with a state of peace and neutrality. The right to judge and conclude therefore, so solemnly maintained in the text, is lost in the comment.

We shall see, whether it can be reinstated by what follows:

The executive is charged with the execution of all laws, the laws of nations as well as the municipal law which recognises and adopts those laws. It is consequently bound, by faithfully executing the laws of neutrality when that is the state of the nation, to avoid giving cause of war to foreign powers.

The first sentence is a truth, but nothing to the point in question. The last is *partly true* in its proper meaning, but *totally untrue* in the meaning of the writer. That the executive is bound faithfully to execute the laws of neutrality, whilst those laws continue unaltered by the competent authority, is true; but not for the reason here given, to wit, to avoid giving cause of war to foreign powers. It is bound to the faithful execution of these as of all other laws internal and external, by the nature of its trust and the sanction of its oath, even if turbulent citizens should consider its so doing as a cause of war at home, or unfriendly nations should consider its so doing as a cause of war abroad. The duty of the executive to preserve external peace, can no more suspend

the force of external laws, than its duty to preserve internal peace can suspend the force of municipal laws.

It is certain that a faithful execution of the laws of neutrality may tend as much in some cases, to incur war from one quarter, as in others to avoid war from other quarters. The executive must nevertheless execute the laws of neutrality whilst in force, and leave it to the legislature to decide, whether they ought to be altered or not. The executive has no other discretion than to convene and give information to the legislature on occasions that may demand it; and whilst this discretion is duly exercised, the trust of the executive is satisfied, and that department is not responsible for the consequences. It could not be made responsible for them without vesting it with the legislative as well as with the executive trust.

These remarks are obvious and conclusive, on the supposition that the expression "laws of neutrality" means simply what the words import, and what alone they can mean, to give force or colour to the inference of the writer from his own premises. As the inference itself however, in its proper meaning, does not approach towards his avowed object, which is to work out a prerogative for the executive to judge, in common with the legislature, whether there be cause of war or not in a public obligation, it is to be presumed that "in faithfully executing the laws of neutrality," an exercise of that prerogative was meant to be included. On this supposition the inference, as will have been seen, does not result from his own premises, and has been already so amply discussed, and, it is conceived, so clearly disproved, that not a word more can be necessary on this branch of his argument.

NO. III.

In order to give colour to a right in the executive to exercise the legislative power of judging, whether there be a cause of war in a public stipulation—two other arguments are subjoined by the writer to that last examined.

The first is simply this: "It is the right and duty of the executive to judge of and interpret those articles of our treaties which give to France particular privileges, *in order to the enforcement of those privileges:*" from which it is stated, as a necessary consequence, that the executive has certain other rights, among which is the right in question.

This argument is answered by a very obvious distinction. The first right is essential to the execution of the treaty, *as a law in operation*, and interferes with no right vested in another department. The second, viz., the right in question, is not essential to the execution of the treaty, or any other law: on the contrary, the article to which the right is applied cannot, as has been shown, from the very nature of it, be *in operation* as a law, without a previous declaration of the legislature; and all the laws to be *enforced* by the executive remain, in the mean time, precisely the same, whatever be the disposition or judgment of the executive. This second right would also interfere with a right acknowledged to be in the legislative department.

If nothing else could suggest this distinction to the writer, he ought to have been reminded of it by his own words, "in order to the enforcement of those privileges"—Was it in order to *the enforcement* of the article of guaranty, that the right is ascribed to the executive?

The other of the two arguments reduces itself into the following form: the executive has the right to receive public ministers; this right includes the right of deciding, in the case of a revolution, whether the new government, sending the minister, ought to be recognised, or not; and this, again, the right to give or refuse operation to preexisting treaties.

The power of the legislature to declare war, and judge of the causes for declaring it, is one of the most express and explicit parts of the constitution. To endeavour to abridge or *affect* it by strained inferences, and by hypothetical or singular occurrences, naturally warns the reader of some lurking fallacy.

The words of the constitution are, "He (the president) shall receive ambassadors, other public ministers, and consuls." I shall not undertake to examine, what would be the precise extent and effect of this function in various cases which fancy may suggest, or which time may produce. It will be more proper to observe, in general, and every candid reader will second the observation, that little, if any thing, more was intended by the clause, than to provide for a particular mode of communication, *almost* grown into a right among modern nations; by pointing out the department of the government, most proper for the ceremony of admitting public ministers, of examining their credentials, and of authenticating their title to the privileges annexed to their character by the law of nations. This being the apparent design of the constitution, it would be highly improper to magnify the function into an important prerogative, even where no rights of other departments could be affected by it.

To show that the view here given of the clause is not a new construction, invented or strained for a particular occasion—I will take the liberty of recurring to the cotemporary work already quoted, which contains the obvious and original gloss put on this part of the constitution by its friends and advocates.

"The president is also to be authorized to receive ambassadors and other public ministers. This, though it has been a rich theme of declamation, is more a matter of *dignity* than of *authority*. It is a circumstance, that will be *without consequence* in the administration of the government, and it is far more convenient that it should be arranged in this manner, than that there should be a necessity for convening the legislature or one of its branches upon every arrival of a foreign minister, though it were merely to take the place of a departed predecessor." *Fed.*, p. 389.[1]

Had it been foretold in the year 1788, when this work was published, that before the end of the year 1793, a writer,

[1] No. 69, written by Mr. Hamilton.

assuming the merit of being a friend to the constitution, would appear, and gravely maintain, that this function, which was to be *without consequence* in the administration of the government, might have the consequence of deciding on the validity of revolutions in favour of liberty, "of putting the United States in a condition to become an associate in war"—nay, "of laying the *legislature* under an *obligation* of *declaring* war," what would have been thought and said of so visionary a prophet?

The moderate opponents of the constitution would probably have disowned his extravagance. By the advocates of the constitution, his prediction must have been treated as "an experiment on public credulity, dictated either by a deliberate intention to deceive, or by the overflowings of a zeal too intemperate to be ingenuous."

But how does it follow from the function to receive ambassadors and other public ministers, that so consequential a prerogative may be exercised by the executive? When a foreign minister presents himself, two questions immediately arise: Are his credentials from the existing and acting government of his country? Are they properly authenticated? These questions belong of necessity to the executive; but they involve no cognizance of the question, whether those exercising the government have the right along with the possession. This belongs to the nation, and to the nation alone, on whom the government operates. The questions before the executive are merely questions of fact; and the executive would have precisely the same right, or rather be under the same necessity of deciding them, if its function was simply to receive *without any discretion to reject* public ministers. It is evident, therefore, that if the executive has a right to reject a public minister, it must be founded on some other consideration than a change in the government, or the newness of the government; and consequently a right to refuse to acknowledge a new government cannot be implied by the right to refuse a public minister.

It is not denied that there may be cases in which a respect to the general principles of liberty, the essential rights of the people, or the overruling sentiments of humanity, might require a government, whether new or old, to be treated as an illegitimate despotism. Such are in fact discussed and admitted by the most approved authorities. But they are great and extraordinary cases, by no means submitted to so limited an organ of the national will as the executive of the United States; and certainly not to be brought by any torture of words, within the right to receive ambassadors.

That the authority of the executive does not extend to a question, whether an *existing* government ought to be recognised or not, will still more clearly appear from an examination of the next inference of the writer, to wit: that the executive has a right to give or refuse activity and operation to preexisting treaties.

If there be a principle that ought not to be questioned within the United States, it is, that every nation has a right to abolish an old government and establish a new one. This principle is not only recorded in every public archive, written in every American heart, and sealed with the blood of a host of American martyrs; but is the only lawful tenure by which the United States hold their existence as a nation.

It is a principle incorporated with the above, that governments are established for the national good, and are organs of the national will.

From these two principles results a third, that treaties formed by the government, are treaties of the nation, unless otherwise expressed in the treaties.

Another consequence is, that a nation, by exercising the right of changing the organ of its will, can neither disengage itself from the obligations, nor forfeit the benefits of its treaties. This is a truth of vast importance, and happily rests with sufficient firmness, on its own authority. To silence or prevent cavil, I insert, however, the following extracts: "Since then such a treaty (a treaty not *personal* to

the sovereign) directly relates to the body of the state, it subsists though the form of the republic happens to be changed, and though it should be even transformed into a monarchy—for the state and the nation are always the same, whatever changes are made in the form of the government—and the treaty concluded with the nation, remains in force as long as the nation exists."—Vatel, B. II, § 85. "It follows that as a treaty, notwithstanding the change of a democratic government into a monarchy, continues in force with the new king, in like manner, if a *monarchy* becomes a *republic*, the treaty made with the king does not expire on that account, unless it was manifestly personal."—Burlam, part iv., c. ix., § 16, ¶ 6.

As a change of government then makes no change in the obligations or rights of the party to a treaty, it is clear that the executive can have no more right to suspend or prevent the operation of a treaty, on account of the change, than to suspend or prevent the operation, where no such change has happened. Nor can it have any more right to suspend the operation of a treaty in force as a law, than to suspend the operation of any other law.

The logic employed by the writer on this occasion, will be best understood by accommodating to it the language of a proclamation, founded on the prerogative and policy of suspending the treaty with France.

Whereas a treaty was concluded on the —— day of ——— between the United States and the French nation, through the kingly government, which was then the organ of its will: and whereas the said nation hath since exercised its right (nowise abridged by the said treaty) of changing the organ of its will, by abolishing the said kingly government, as inconsistent with the rights and happiness of the people, and establishing a republican in lieu thereof, as most favourable to the public happiness, and best suited to the genius of a people become sensible of their rights and ashamed of their chains: and whereas, by the constitution of the United

States, the executive is authorized to receive ambassadors, other public ministers, and consuls: and whereas a public minister, duly appointed and commissioned by the new republic of France, hath arrived and presented himself to the executive, in order to be received in his proper character, now be it known, that by virtue of the said right vested in the executive to receive ambassadors, other public ministers and consuls, and of the rights included therein, the executive hath refused to receive the said minister from the said republic, and hath thereby caused the activity and operation of all treaties with the French nation, *hitherto in force as supreme laws of the land*, to be suspended until the executive, by taking off the said suspension, shall revive the same: of which all persons concerned are to take notice at their peril.

The writer, as if beginning to feel that he was grasping at more than he could hold, endeavours all of a sudden to squeeze his doctrine into a smaller size, and a less vulnerable shape. The reader shall see the operation in his own words.

"And where *a treaty* antecedently exists between the United States and such nation, [a nation whose government has undergone a revolution,] that right [the right of judging, whether the new rulers ought to be recognised or not] involves the power of giving operation or not to *such treaty*. *For* until the new government is acknowledged, the treaties between the nations *as far at least* as regards *public rights*, are *of course* suspended."

This qualification of the suspending power, though reluctantly and inexplicitly made, was prudent, for two reasons: first, because it is pretty evident that *private rights*, whether of judiciary or executive cognizance, may be carried into effect without the agency of the foreign government: and therefore would not be suspended, of course, by a rejection of that agency: secondly, because the judiciary, being an independent department, and acting under an oath to pursue the law of treaties as the supreme law of the land, might not readily follow the executive example; and a *right* in *one*

expositor of treaties, to consider them as *not in force*, whilst it would be the *duty* of *another expositor* to consider them as *in force*, would be a phenomenon not so easy to be explained. Indeed, as the doctrine stands qualified, it leaves the executive the right of suspending the law of treaties in relation to rights of one description, without exempting it from the duty of enforcing it in relation to rights of another description.

But the writer is embarked in so unsound an argument, that he does not save the rest of his inference by this sacrifice of one half of it. It is not true, that *all public rights* are of course suspended by a refusal to acknowledge the government, or even by a suspension of the government. And in the next place, the right in question does not follow from the necessary suspension of public rights, in consequence of a refusal to acknowledge the government.

Public rights are of two sorts: those which require the agency of government; those which may be carried into effect without that agency.

As public rights are the rights of the nation, not of the government, it is clear, that wherever they can be made good to the nation, without the office of government, they are not suspended by the want of an acknowledged government, or even by the want of an existing government; and that there are important rights of this description, will be illustrated by the following case.

Suppose, that after the conclusion of the treaty of alliance between the United States and France, a party of the enemy had surprised and put to death every member of congress; that the occasion had been used by the people of America for changing the old confederacy into such a government as now exists, and that in the progress of this revolution, an interregnum had happened: suppose further, that during this interval, the states of South Carolina and Georgia, or any other parts of the United States, had been attacked, and been put into evident and imminent danger of being irrecoverably lost, without the interposition of the French arms; is it not

manifest, that as the treaty is the treaty of the United States, not of their government, the people of the United States could not forfeit their right to the guaranty of their territory by the accidental suspension of their government; and that any attempt, on the part of France, to evade the obligations of the treaty, by pleading the suspension of government, or by refusing to acknowledge it, would justly have been received with universal indignation, as an ignominious perfidy?

With respect to public rights that cannot take effect in favour of a nation without the agency of its government, it is admitted that they are suspended of course where there is no government in existence, and also by a refusal to acknowledge an existing government. But no inference in favour of *a right* to suspend the operation of treaties, can be drawn from either case. Where the existence of the government is suspended, it is a case of necessity; it would be a case happening without the act of the executive, and consequently could prove nothing for or against the right. In the other case, to wit, of a refusal by the executive to recognise an *existing government*, however certain it may be, that a suspension of some of the public rights might ensue; yet it is equally certain, that the refusal would be without right or authority; and that no right or authority could be implied or produced by the unauthorized act. If a right to do whatever might bear an analogy to the necessary consequence of what was done without right, could be inferred from the analogy, there would be no other limit to power than the limit to its ingenuity.

It is no answer to say that it may be doubtful, whether a government does or does not exist; or doubtful which may be the existing and acting government. The case stated by the writer is, that there are existing rulers; that there is an acting government; but that they are *new* rulers; and that it is a *new* government. The full reply, however, is to repeat what has been already observed; that questions of this sort are mere questions of fact; that as such only, they belong to

the executive, that they would equally belong to the executive, if it was tied down to the reception of public ministers, without any discretion to receive or reject them; that where the fact appears to be, that no government exists, the consequential suspension is independent of the executive; that where the fact appears to be, that the government does exist, the executive must be governed by the fact, and can have no right or discretion, on account of the date or form of the government, to refuse to acknowledge it, either by rejecting its public ministers, or by any other step taken on that account. If it does refuse on that account, the refusal is a wrongful act, and can neither prove nor illustrate a rightful power.

I have spent more time on this part of the discussion than may appear to some, to have been requisite. But it was considered as a proper opportunity for presenting some important ideas, connected with the general subject, and it may be of use in showing how very superficially, as well as erroneously, the writer has treated it.

In other respects, so particular an investigation was less necessary. For allowing it to be, as contended, that a suspension of treaties might happen from a *consequential* operation of a right to receive public ministers, which is an *express right* vested by the constitution; it could be no proof, that the same or a *similar* effect could be produced by the *direct* operation of a *constructive power*.

Hence the embarrassments and gross contradictions of the writer in defining, and applying his ultimate inference from the operation of the executive power with regard to public ministers.

At first it exhibits an "important instance of the right of the executive to decide the obligation of the nation with regard to foreign nations."

Rising from that, it confers on the executive, a right "to put the United States in a condition to become an associate in war."

And at its full height, it authorizes the executive "to lay the legislature under *an obligation* of declaring war."

From this towering prerogative, it suddenly brings down the executive to the right of "*consequentially affecting* the proper or improper exercise of the power of the legislature to declare war."

And then, by a caprice as unexpected as it is sudden, it espouses the cause of the legislature; rescues it from the executive right "to lay it under an *obligation* of declaring war;" and asserts it to be "free to perform its *own* duties according to its *own* sense of them," without any other control than what it is liable to, in every other legislative act.

The point at which it finally seems to rest, is, that "the executive, in the exercise of its *constitutional powers*, may establish an antecedent state of things, which ought to *weigh* in the *legislative decisions;*" a prerogative which will import a great deal, or nothing, according to the handle by which you take it; and which at the same time, you can take by no handle that does not clash with some inference preceding.

If "by weighing in the legislative decisions" be meant having *an influence* on the *expediency* of this or that decision, in the *opinion* of the legislature; this is no more than what every antecedent state of things ought to have, from whatever cause proceeding; whether from the use or abuse of constitutional powers, or from the exercise of constitutional or assumed powers. In this sense, the power to establish an antecedent state of things is not contested. But then it is of no use to the writer, and is also in direct contradiction to the inference, that the executive may "lay the *legislature* under an *obligation* to decide in favour of *war*."

If the meaning be as is implied by the force of the terms "constitutional powers," that the antecedent state of things produced by the executive, ought to have a *constitutional weight* with the legislature; or, in plainer words, imposes a *constitutional obligation* on the *legislative decisions;* the writer will not only have to combat the arguments by which such a

prerogative has been disproved; but to reconcile it with his last concession, that "the legislature is *free* to perform its duties according to its *own* sense of them." He must show that the legislature is, at the same time *constitutionally free* to pursue its *own judgment*, and *constitutionally bound* by the *judgment of the executive*.

NO. IV.

The last papers completed the view proposed to be taken of the arguments in support of the new and aspiring doctrine, which ascribes to the executive the prerogative of judging and deciding, whether there be causes of war or not in the obligations of treaties; notwithstanding the express provision in the constitution, by which the legislature is made the organ of the national will, on questions, whether there be or be not a cause for declaring war. If the answer to these arguments has imparted the conviction which dictated it, the reader will have pronounced that they are generally superficial, abounding in contradictions, never in the least degree conclusive to the main point, and not unfrequently conclusive against the writer himself: whilst the doctrine—that the powers of treaty and war, are in their nature executive powers, which forms the basis of those arguments, is as indefensible and as dangerous as the particular doctrine to which they are applied.

But it is not to be forgotten that these doctrines, though ever so clearly disproved, or ever so weakly defended, remain before the public a striking monument of the principles and views which are entertained and propagated in the community.

It is also to be remembered, that however the consequences flowing from such premises, may be disavowed at this time, or by this individual, we are to regard it as morally certain, that in proportion as the doctrines make their way into the creed of the government, and the acquiescence of the public, every power that can be deduced from them, will be deduced,

and exercised sooner or later by those who may have an interest in so doing. The character of human nature gives this salutary warning to every sober and reflecting mind. And the history of government in all its forms and in every period of time, ratifies the danger. A people, therefore, who are so happy as to possess the inestimable blessing of a free and defined constitution cannot be too watchful against the introduction, nor too critical in tracing the consequences, of new principles and new constructions, that may remove the landmarks of power.

Should the prerogative which has been examined, be allowed, in its most limited sense, to usurp the public countenance, the interval would probably be very short, before it would be heard from some quarter or other, that the prerogative either amounts to nothing, or means a right to judge and conclude that the obligations of treaty impose war, as well as that they permit peace; that it is fair reasoning to say, that if the prerogative exists at all, an operative rather than an *inert* character ought to be given to it.

In support of this conclusion, there would be enough to echo, "that the prerogative in this active sense, is connected with the executive in various capacities—as the organ of intercourse between the nation and foreign nations—as the interpreter of national treaties" (a violation of which may be a cause of war)—"as that power which is charged with the execution of the laws, of which treaties make a part—as that power, which is charged with *the command and application of the public force.*"

With additional force, it might be said, that the executive is as much the *executor* as the *interpreter* of treaties; that if by virtue of the *first* character, it is to judge of the *obligations* of treaties, it is, by virtue of the *second*, equally authorised to carry those obligations into *effect.* Should there occur, for example, a *casus fœderis*, claiming a military cooperation of the United States, and a military force should happen to be under the command of the executive, it must have the

same right, as *executor of public treaties*, to *employ* the public force, as it has in quality of *interpreter of public treaties* to decide, whether it ought to be *employed*.

The case of a treaty of peace would be an auxiliary to comments of this sort: it is a condition annexed to every treaty, that an infraction even of an important article, on one side, extinguishes the obligations on the other: and the immediate consequence of a dissolution of a treaty of peace is a restoration of a state of war. If the executive is "to decide on the obligation of the nation with regard to foreign nations"—"to pronounce the *existing condition* (in the sense annexed by the writer) of the nation with regard to them; and to admonish the citizens of their obligations and duties, as founded upon *that condition* of things"—"to judge what are the *reciprocal rights* and obligations of the United States, and of all and each of the powers at war;"—add, that if the executive, moreover, possesses all powers relating to war, *not strictly* within the power to *declare war*, which any pupil of political casuistry could distinguish from a mere *relapse* into a war that *had been declared:* with this store of materials, and the example given of the use to be made of them, would it be difficult to fabricate a power in the executive to plunge the nation into war, whenever a treaty of peace might happen to be infringed?

But if any difficulty should arise, there is another mode chalked out, by which the end might clearly be brought about, even without the violation of the treaty of peace; especially if the other party should happen to change its government at the crisis. The executive could *suspend* the treaty of peace *by refusing to receive an ambassador* from the *new* government; and the state of war *emerges of course*.

This is a sample of the use to which the extraordinary publication we are reviewing might be turned. Some of the inferences could not be repelled at all. And the least regular of them must go smoothly down with those who had swallowed the gross sophistry which wrapped up the original dose.

Every just view that can be taken of this subject, admonishes the public of the necessity of a rigid adherence to the simple, the received, and the fundamental doctrine of the constitution, that the power to declare war, including the power of judging of the causes of war, is *fully* and *exclusively* vested in the legislature; that the executive has no right, in any case, to decide the question, whether there is or is not cause for declaring war; that the right of convening and informing congress, whenever such a question seems to call for a decision, is all the right which the constitution has deemed requisite or proper; and that for such, more than for any other contingency, this right was specially given to the executive.

In no part of the constitution is more wisdom to be found, than in the clause which confides the question of war or peace to the legislature, and not to the executive department. Beside the objection to such a mixture to heterogeneous powers, the trust and the temptation would be too great for any one man; not such as nature may offer as the prodigy of many centuries, but such as may be expected in the ordinary successions of magistracy. War is in fact the true nurse of executive aggrandizement. In war, a physical force is to be created; and it is the executive will, which is to direct it. In war, the public treasures are to be unlocked; and it is the executive hand which is to dispense them. In war, the honours and emoluments of office are to be multiplied; and it is the executive patronage under which they are to be enjoyed. It is in war, finally, that laurels are to be gathered; and it is the executive brow they are to encircle. The strongest passions and most dangerous weaknesses of the human breast; ambition, avarice, vanity, the honourable or venial love of fame, are all in conspiracy against the desire and duty of peace.

Hence it has grown into an axiom that the executive is the department of power most distinguished by its propensity to war: hence it is the practice of all states, in proportion as they are free, to disarm this propensity of its influence.

As the best praise then that can be pronounced on an executive magistrate, is, that he is the friend of peace; a praise that rises in its value, as there may be a known capacity to shine in war: so it must be one of the most sacred duties of a free people, to mark the first omen in the society, of principles that may stimulate the hopes of other magistrates of another propensity, to intrude into questions on which its gratification depends. If a free people be a wise people also, they will not forget that the danger of surprise can never be so great, as when the advocates for the prerogative of war can sheathe it in a symbol of peace.

The constitution has manifested a similar prudence in refusing to the executive the *sole* power of making peace. The trust in this instance also, would be too great for the wisdom, and the temptations too strong for the virtue, of a single citizen. The principle reasons on which the constitution proceeded in its regulation of the power of treaties, including treaties of peace, are so aptly furnished by the work already quoted more than once, that I shall borrow another comment from that source.

"However proper or safe it may be in a government where the executive magistrate is an hereditary monarch, to commit to him the entire power of making treaties, it would be utterly unsafe and improper to entrust that power to an elective magistrate of four years' duration. It has been remarked upon another occasion, and the remark is unquestionably just, that an hereditary monarch, though often the oppressor of his people, has personally too much at stake in the government to be in any material danger of being corrupted by foreign powers: but that a man raised from the station of a private citizen to the rank of chief magistrate, possessed of but a moderate or slender fortune, and looking forward to a period not very remote, when he may probably be obliged to return to the station from which he was taken, might sometimes be under temptations to sacrifice his duty to his interest, which it would require superlative virtue to

withstand. An avaricious man might be tempted to betray the interests of the state to the acquisition of wealth. An ambitious man might make his own aggrandizement, by the aid of a foreign power, the price of his treachery to his constituents. The history of human conduct does not warrant that exalted opinion of human virtue, which would make it wise in a nation to commit interests of so delicate and momentous a kind, as *those which concern its intercourse* with the rest of the world, to the *sole* disposal of a magistrate created and circumstanced as would be a president of the United States." p. 418.[1]

I shall conclude this paper and this branch of the subject, with two reflections, which naturally arise from this view of the constitution.

The first is, that as the personal interest of an hereditary monarch in the government, is the *only* security against the temptation incident to the commitment of the delicate and momentous interests of the nation, which concern its intercourse with the rest of the world, to the disposal of a single magistrate, it is a plain consequence, that every addition that may be made to the *sole* agency and influence of the executive, in the intercourse of the nation with foreign nations, is an increase of the dangerous temptation to which an *elective and temporary* magistrate is exposed; and an *argument* and *advance* towards the security afforded by the personal interests of an *hereditary* magistrate.

Secondly, as the constitution has not permitted the executive *singly* to conclude or judge that peace ought to be made, it might be inferred from that circumstance alone, that it never meant to give it authority, *singly*, to judge and conclude that war ought not to be made. The trust would be precisely similar and equivalent in the two cases. The right to say that war ought not to go on, would be no greater than the right to say that war ought not to begin. Every danger of error or corruption, incident to such a prerogative in one

[1] *Federalist*, No. 75, written by Mr. Hamilton.

case, is incident to it in the other. If the constitution therefore has deemed it unsafe or improper in the one case, it must be deemed equally so in the other case.

NO. V.[1]

Having seen that the executive has no constitutional right to interfere in any question, whether there be or be not a cause of war, and the extensive consequences flowing from the doctrines on which such a claim has been asserted; it remains to be inquired, whether the writer is better warranted in the fact which he assumes, namely that the proclamation of the executive has undertaken to decide the question,

[1] TO THOMAS JEFFERSON.

Aug 20, 93

. . . This hurries me; And has forced me to hurry what will be inclosed herewith, particularly the last N°. V, which required particular care in the execution. I shall be obliged to leave that & the greater part of the other Nos to be transcr[d], sealed up & forwarded in my absence. It is certain therefore that many little errors will take place. As I cannot let them be detained till I return, I must pray you to make such corrections as will not betray your hand. In pointing & *erasures* not breaking the sense, there will be no difficulty. I have already requested you to make free with the latter.[2] You will find more quotations from the Fed[t]. Dash them out if you think the most squeamish critic could object to them. In N°. 5. I suggest to your attention a long preliminary remark into which I suffered myself to be led before I was aware of the prolixity. As the piece is full long without it, it had probably better be lopped off. The propriety of the two last paragraphs claims your particular criticism. I w[d] not have hazarded them without the prospect of your revisal, & if proper your erasure. That which regards Spain &c may contain unsound reasoning, or be too delicate to be touched in a Newspaper. The propriety of the last, as to the President's answers to addressers depends on the truth of the fact, of which you can judge. I am not sure that I have seen all the answers. My last was of the 12th, & covered the 2 first Nos. of H[elvidiu]s. I am assured that it was put into the post office on tuesday evening. It ought therefore to have reached you on

[2] Jefferson wrote, September 1, that he was "never more charmed with anything," and that he had changed nothing, except a part of one sentence.—*Writings* (Ford), vi., 402.

whether there be a cause of war or not, in the article of guaranty between the United States and France, and in so doing has exercised the right which is claimed for that department.

Before I proceed to the examination of this point, it may not be amiss to advert to the novelty of the phraseology, as well as of the doctrines, espoused by this writer. The source from which the former is evidently borrowed, may enlighten our conjectures with regard to the source of the latter. It is a just observation also that words have often a gradual influence on ideas, and, when used in an improper sense, may cover fallacies which would not otherwise escape detection.

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saturday last. As an opp^{y} to Fred^{g} may happen before more than the 3^{d} N^{o}. may be transcribed, it is possible that this may be accompanied by that alone. . . .—*Mad. MSS.*

TO THOMAS JEFFERSON.

At Col. M, [Aug. 22d, 1793.]

Dear Sir

I left home the day before yesterday which was the date of my last, it was to be accompanied by 2 & perhaps tho' not probably 3 additional N^{os} of H-l-v-d-s. The last to wit N^{o}. 5, contained two paragraphs the one relating to the accession of S. & P. to the war against F. the other to the answers of the P. to the addresses on his proclamation, which I particularly requested you to revise, and if improper, to erase. The whole piece was more hurried than it ought to have been, and these paragraphs penned in the instant of my setting out which had been delayed as late as would leave enough of the day for the journey. I mention this as the only apology for the gross error of fact committed with respect to the term neutrality, which it is asserted the P. has not used in any of his answers. I find on looking into them here, that he used it in the first of all, to the Merch^{ts} of Philad^{a}, and in one other out of three which I have examined. I must make my conditional request therefore an absolute one as to that passage. If he should forbear the use of the term in all his answers subsequent to the perversion of it by Pacificus, it will strengthen the argument used; but that must be a future & contingent consideration. . . .—*Mad. MSS.*

TO THOMAS JEFFERSON.

Aug. 27, 1793

Dear Sir

I wrote you a few lines by the last post from this place just to apprise you of my movement to it. I have since seen the Richmond &

I allude particularly to his application of the term *government* to the *executive authority alone*. The proclamation is "a manifestation of the sense of the *government*." "Why did not the *government* wait," &c. "The policy on the part of the *government* of removing all doubt as to *its own disposition*."[1] "It was of great importance, that our citizens should understand as early as possible the opinion entertained by the

the Philad[a] papers containing, the latter the certificate of Jay & King & the publications relating to the subject of it, the [former,] latter, the proceedings at Richmond dictated no doubt by the cabal at Philad[a]. It is painful to observe the success of the management for putting Wythe at the head of them. I understand however that a considerable revolution has taken place in his political sentiments under the influence of some disgusts he has received from the State Legislature. By what has appeared I discover that a determination has been formed to drag before the public the indiscretions of Genet; and turn them & the popularity of the P. to the purposes driven at. Some impression will be made here of course. A plan is evidently laid in Rich[d] to render it extensive. If an early & well-digested effort for calling out the real sense of the people be not made, there is room to apprehend they may in many places be misled. This has employed the conversation of ——— & myself. We shall endeavor at some means of repelling the danger; particularly by setting on foot expressions of the public mind in important Counties, and under the auspices of respectable names. I have written with this view to Caroline, and have suggested a proper train of ideas, and a wish that Mr. P. would patronize the measure. Such an example would have great effect. Even if it sh[d] not be followed it would be considered as an authentic specimen of the *Country* temper; and would put other places on their guard ag[st] the snares that may be laid for them. The want of opportunities, and our ignorance of trustworthy characters, will circumscribe our efforts in this way to a very narrow compass. The rains for several days have delayed my trip to the Gentleman named in my last. Unless to-morrow sh[d] be a favorable day, I shall be obliged to decline it altogether. In two or three days I shall be in a situation to receive & answer your letters as usual. That by Mr. D R. has not yet reached me.—*Mad. MSS.*

[1] The writer ought not in the same paper, No. VII., to have said: "Had the president announced his *own disposition*, he would have been chargeable with egotism, if not *presumption*."

government," &c. "If in addition to the rest, the early manifestation of *the views* of the *government* had any effect *in fixing the public opinion*," &c. The reader will probably be struck with the reflection, that if the proclamation really possessed the character, and was to have the effects, here ascribed to it, something more than the authority of *the government*, in the writer's sense of government, would have been a necessary sanction to the act; and if the term "government" be removed, and that of "president" substituted, in the sentences quoted, the justice of the reflection will be felt with peculiar force. But I remark only on the singularity of the style adopted by the writer, as showing either that the phraseology of a foreign government is more familiar to him than the phraseology proper to our own, or that he wishes to propagate a familiarity of the former in preference to the latter. I do not know what degree of disapprobation others may think due to this innovation of language; but I consider it as far above a trivial criticism, to observe that it is by no means unworthy of attention, whether viewed with an eye to its probable cause, or its apparent tendency. "The government" unquestionably means, in the United States, the whole government, not the executive part, either exclusively, or *pre-eminently:* as it may do in a monarchy, where the splendour of prerogative eclipses, and the machinery of influence directs, every other part of the government. In the former and proper sense, the term has hitherto been used in official proceedings, in public discussions, and in private discourse. It is as short and as easy, and less liable to misapprehension, to say the executive, or the president, as to say the government. In a word, the new dialect could not proceed either from necessity, conveniency, propriety, or perspicuity; and being in opposition to common usage, so marked a fondness for it justifies the notice here taken of it. It shall no longer detain me, however, from the more important subject of the present paper.

I proceed therefore to observe, that as a "proclamation,"

in its *ordinary* use, is an address to citizens or subjects only; as it is always understood to relate to the law *actually in operation*, and to be an act *purely* and *exclusively* executive; there can be no implication in the *name* or the *form* of such an instrument, that it was meant principally for the information of foreign nations; far less that it related to an *eventual stipulation* on the subject *acknowledged* to be within the *legislative province*.

When the writer therefore undertook to engraft his new prerogative on the proclamation, by ascribing to it so unusual, and unimplied a meaning, it was evidently incumbent on him to show, that the *text* of the instrument could not be satisfied by any other construction than his own. Has he done this? No. What has he done? He has called the proclamation a proclamation of neutrality; he has put his own arbitrary meaning on that phrase; and has then proceeded in his arguments and his inferences, with as much confidence, as if no question was ever to be asked whether the term "neutrality" be in the proclamation; or whether, if there, it could justify the use he makes of it.

It has appeared from observations already made, that if the term "neutrality" was in the proclamation, it could not avail the writer in the present discussion; but the fact is, no such term is to be found in it, nor any other term, of a meaning equivalent to that, in which the term neutrality is used by him.

There is the less pretext in the present case, for hunting after any latent or extraordinary object, because an obvious and legal one is at hand, to satisfy the occasion on which the proclamation issued. The existence of war among several nations with which the United States have an extensive intercourse; the duty of the executive to preserve peace by enforcing its laws, whilst those laws continued in force; the danger that indiscreet citizens might be tempted or surprised by the crisis, into unlawful proceedings, tending to involve the United States in a war, which the competent authority

might decide them to be at liberty to avoid, and which, if they should be judged not at liberty to avoid, the other party to the *eventual contract*, might be willing not to impose on them; these surely might have been sufficient grounds for the measure pursued by the executive: and being legal and rational grounds, it would be wrong, if there be no necessity, to look beyond them.

If there be any thing in the proclamation of which the writer could have made a handle, it is the part which declares, the *disposition*, the *duty*, and the *interest* of the United States, in relation to the war existing in Europe. As the legislature is the only competent and constitutional organ of the will of the nation; that is, of its disposition, its duty, and its interest, in relation to a commencement of war, in like manner as the president and senate *jointly*, not the president *alone*, are in relation to peace, after war has been commenced —I will not dissemble my wish that a language less exposed to criticism had been preferred; but taking the expressions, in the sense of the writer himself, as analogous to the language which might be proper, on the reception of a public minister, or any similar occasion, it is evident that his construction can derive no succour even from this source.

If the proclamation, then, does not *require* the construction which this writer has taken the liberty of putting on it; I leave it to be decided, whether the following considerations do not forbid us to suppose, that the president could have intended by that act, to embrace and prejudge the legislative question, whether there was, or was not, under the circumstances of the case, a cause of war in the article of guaranty.

It has been shown that such an intention would have usurped the prerogative not vested in the executive, and even *confessedly* vested in another department.

In exercising the constitutional power of deciding a question of war, the legislature ought to be as free to decide, according to its own sense of the public good, on one side as on the other side. Had the proclamation prejudged the ques-

tion on either side, and *proclaimed its decision to the world:* the legislature, instead of being as free as it ought, might be thrown under the dilemma, of either sacrificing its judgment to that of the executive; or, by opposing the executive judgment, of producing a relation between the two departments, extremely delicate among ourselves, and of the worst influence on the national character and interests abroad. A variance of this nature, it will readily be perceived, would be very different from a want of conformity to the *mere recommendations* of the executive, in the measure adopted by the legislature.

It does not appear that such a proclamation could have even pleaded any call, from either of the parties at war with France, for an explanation of the light in which the guaranty was viewed. Whilst, indeed, no positive indication whatever was given of hostile purposes, it is not conceived, that any power could have decently made such an application; or, if it had, that a proclamation would have been either a satisfactory, or an honourable answer. It could not have been satisfactory, if serious apprehensions were entertained; because it would not have proceeded from that authority which alone could definitively pronounce the will of the United States on the subject. It would not have been honourable, because a private diplomatic answer, only, is due to a private diplomatic application; and to have done so much more, would have marked a pusillanimity and want of dignity in the executive magistrate.

But whether the executive was or was not applied to, or whatever weight be allowed to that circumstance, it ought never to be presumed, that the executive would so abruptly, so publicly, and so solemnly, proceed to disclaim a sense of the contract, which the other party might consider, and wish to support by discussion, as its true and reasonable import. It is asked, indeed, in a tone that sufficiently displays the spirit in which the writer construes both the proclamation and the treaty, "Did the executive stand in need of the logic

of a foreign agent to enlighten it as to the duties or the interests of the nation; or was it bound to ask his consent to a step, which appeared to itself consistent with the former, and conducive to the latter? The sense of treaties was to be learned from the treaties themselves." Had he consulted his Vatel, instead of his animosity to France, he would have discovered, that however humiliating it might be to wait for a foreign logic, to assist the interpretation of an act depending on the national authority alone, yet in the case of a treaty, which is as much the treaty of a foreign nation, as it is ours, and in which foreign duties and rights are as much involved as ours, the sense of the treaty, though to be learned from the treaty itself, is to be equally learned by both parties to it. Neither of them can have a right more than the other, to say what a particular article means; and where there is equality without a judge, consultation is as consistent with dignity as it is conducive to harmony and friendship. Let Vatel however be heard on the subject.

"The third general maxim, or principle, on the subject of interpretation [of treaties] is: *that neither the one nor the other of the interested or contracting powers has a right to interpret the act or the treaty at its pleasure.* For if you are at liberty to give my promise what sense you please, you will have the power of obliging me to do whatever you have a mind, contrary to my intention, and beyond my real engagement: and reciprocally, *if I am allowed to explain my promises as I please, I may render them vain and illusive, by giving them a sense quite different from that in which they were presented to you, and in which you must have taken them in accepting them.*" Vatel, B. II., c. vii., § 265.

The writer ought to have been particularly sensible of the improbability that a precipitate and *ex parte* decision of the question arising under the guaranty, could have been intended by the proclamation. He had but just gone through the undertaking, to prove that the article of guaranty like the rest of the treaty is defensive, not offensive. He had

examined his books and retailed his quotations, to show that the criterion between the two kinds of war is the circumstance of priority in the attack. He could not therefore but know, that according to his own principles, the question, whether the United States were under an obligation or not to take part in the war, was a *question of fact* whether the first attack was made by France or her enemies. And to decide a question of fact, as well as of principle, without waiting for such representations and proofs as the absent and interested party might have to produce, would have been a proceeding contrary to the ordinary maxims of justice, and requiring circumstances of a very peculiar nature, to warrant it towards any nation. Towards a nation which could verify her claim to more than bare justice by our own reiterated and formal acknowledgments, and which must in her present singular and interesting situation have a peculiar sensibility to marks of our friendship or alienation, the impropriety of such a proceeding would be infinitely increased, and in the same proportion the improbability of its having taken place.

There are reasons of another sort which would have been a bar to such a proceeding. It would have been as impolitic as it would have been unfair and unkind.

If France meant not to insist on the guaranty, the measure, without giving any present advantage, would have deprived the United States of a future claim which may be of importance to their safety. It would have inspired France with jealousies of a secret bias in this country toward some of her enemies which might have left in her breast a spirit of contempt and revenge, of which the effects might be felt in various ways. It must in particular have tended to inspire her with a disinclination to feed our commerce with those important advantages which it already enjoys, and those more important ones which it anxiously contemplates. The nation that consumes more of the fruits of our soil than any other nation in the world, and supplies the only foreign raw[1]

[1] Molasses.

material of extensive use in the United States, would not be unnecessarily provoked by those who understand the public interest, and make it their study, as it is their duty to advance it.

I am aware that the common-place remark will be interposed, that, "commercial privileges are not worth having, when not secured by mutual interest; and never worth purchasing because they will grow of themselves out of a mutual interest." Prudent men, who do not suffer their reason to be misled by their prejudices, will view the subject in a juster light. They will reflect, that if commercial privileges are not worth purchasing, they are worth having without purchase; that in the commerce of a great nation, there are valuable privileges which may be granted or not granted, or granted either to this or that country, without any sensible influence on the interest of the nation itself; that the friendly or unfriendly disposition of a country, is always an article of moment in the calculations of a comprehensive interest; that some sacrifices of interest will be made to other motives, by nations as well as by individuals, though not with the same frequency, or in the same proportions; that more of a disinterested conduct, or of a conduct founded on liberal views of interest, prevails in some nations than in others; that as far as can be seen of the influence of the revolution on the genius and the policy of France, particularly with regard to the United States, every thing is to be hoped by the latter on this subject, which one country can reasonably hope from another. In this point of view, a greater error could not have been committed than in a step that might have turned the present disposition of France to open her commerce to us as far as a liberal calculation of her interest would permit, and her friendship towards us, and confidence in our friendship towards her, could prompt, into a disposition to shut it as closely against us as the united motives of interest, of distrust, and of ill will, could urge her.

On the supposition that France might intend to claim the

guaranty, a hasty and harsh refusal before we were asked, on a ground that accused her of being the aggressor in the war against every power in the catalogue of her enemies, and in a crisis when all her sensibility must be alive towards the United States, would have given every possible irritation to a disappointment which every motive that one nation could feel towards another and towards itself, required to be alleviated by all the circumspection and delicacy that could be applied to the occasion.

The silence of the executive, since the accession of Spain and Portugal to the war against France, throws great light on the present discussion. Had the proclamation been issued in the sense, and for the purposes ascribed to it, that is to say, as a declaration of neutrality, another would have followed, on that event. If it was the right and duty of the *government*, that is, the *president*, to manifest to Great Britain and Holland, and to the American merchants and citizens, his *sense*, his *disposition*, and his *views* on the question, whether *the United States were, under the circumstances of the case, bound or not, to execute the clause of guaranty, and not to leave it uncertain, whether the executive did or did not believe a state of neutrality* to be consistent with our treaties; the *duty*, as well as the right prescribed a similar manifestation to all the parties concerned, after[1] Spain and Portugal had joined the other maritime enemies of France. The opinion of the executive with respect to a consistency or inconsistency of neutrality with treaties, in the *latter case*, could not be *inferred* from the proclamation in the former, because the *circumstances might be different:* the war in the *latter case*, might be *defensive* on the side of France, though offensive against her other enemies. Taking the proclamation in its proper sense, as reminding all concerned, that as the United States

[1] The writer is betrayed into an acknowledgment of this in his seventh number, where he applies his reasoning to Spain as well as to Great Britain and Holland. He had forgotten that Spain was not included in the proclamation.

were at peace, (that state not being affected by foreign wars, and only to be changed by the legislative authority of the country,) the laws of peace were still obligatory, and would be enforced; and the inference is so obvious and so applicable to all other cases, *whatever circumstances* may distinguish them, that another proclamation would be unnecessary. Here is a new aspect of the whole subject, admonishing us in the most striking manner at once of the danger of the prerogative contended for, and the absurdity of the distinctions and arguments employed in its favour. It would be as impossible in practice, as it is in theory, to separate the power of judging and concluding that the obligations of a treaty do not impose war, from that of judging and concluding that the obligations *do impose war*. In certain cases, silence would proclaim the latter conclusion, as intelligibly as words could do the former. The writer indeed has himself abandoned the distinction in his seventh paper, by declaring expressly that the object of the proclamation would have been defeated "by leaving it uncertain, whether the executive did or *did not* believe a state of neutrality to be consistent with our treaties."

HELVIDIUS.

TO ARCHIBALD STUART. VA. HIST. SOC. MSS.

Sep. 1. 1793

DEAR SIR

Being well persuaded of your attachment to the public good, I make no apology for mentioning to you a few circumstances which I conceive to be deeply connected with it. It appears by accounts received by Col. Monroe and myself from Mr. Jefferson, as well as by the face of the late Newspapers that a variance of a very serious nature has taken place between the federal executive and Mr. Genet the French Minister. From whatever causes it may

have particularly resulted, and whatever blame may belong to the latter, the event will give great pain to all those enlightened friends of those principles of liberty on which the American & french Revolutions are founded, and of that sound policy which ought to maintain the connection between the two countries. Unfortunately this character is not due to every description of person among us. There are some who dislike Republican Government. There are others who dislike the connection with France. And there are others misled by the influence of both. From these quarters attempts are already issuing to make the worst instead of the best of the event, to turn the public . . . in respect to Genet against the French Nation, to give the same turn to the public veneration for the President to produce by these means an animosity between America & France, as the hopeful source of the dissolution of their political & commercial union, of a consequent connection with G. B. and under her auspices to a gradual approximation to her Form of Government. In this state of things Is it not the duty of all good citizens to deliberate on the best steps that can be taken for defecting the mischief? And can there be any doubt that a true and authentic expression of the sense of the people will be the most effectual as well as the most proper antidote that can be applied? It is as little doubtful in my opinion what the sense of the people is. They are attached by the Constitution. They are attached to the President. They are attached to the French Nation &

Revolution. They are attached to peace as long as it can be honorably preserved. They are averse to Monarchy and to a political connection with that of Great Britain and will readily protest against any known or supposed danger that may have this change in their situation for their object. Why then cannot the sense of the people be collected on these points by the agency of temperate and respectable men who have the opportunity of meeting them. This is the more requisite in the country at large at present as the voice of particular plans distinguished by particular interests and opinions may otherwise be mistaken as that of the nation and every hope be thence cut off of preserving the esteem & affection as yet existing between the French & the American people. A great deal might be said on this subject: To you a very little will suffice and the less as you will learn from Col. Monroe all the particulars which may explain the ground of what I have taken the liberty of suggesting. I shall only therefore add my request that you consider this letter as entirely confidential, and as a proof of the esteem & regard with which I am Dear . . .

Your sincere friend & ob't Serv^t^

TO THOMAS JEFFERSON. MAD. MSS.

Sept^r^ 2d, 1793

DEAR SIR

I dropped you a few lines this morning by a servant going to George Town with your horse. I had

not time without detaining him to say more than that I had your two favors of the 11th Ult. by Mr D. R. and of the 18th by post. The former was communicated to Monroe as shall be the latter in case of opportunity. The conduct of Genet, as developed in these, and in his proceedings as exhibited in the newspapers, is as unaccountable as it is distressing. The effect is beginning to be strongly felt here in the surprise and disgust of those who are attached to the French cause, and viewed this minister as the instrument for cementing instead of alienating, the two Republics. These sensations are powerfully reinforced by the general and habitual veneration for the President. The Anglican party is busy as you may suppose in making the worst of everything, and in turning the public feelings against France, and thence in favor of England. The only antidote for their poison is to distinguish between the nation & its agent, between principles and events; and to impress the well meaning with the fact that the enemies of France & of Liberty are at work to lead them from their honorable connection with these into the arms and ultimately into the Government, of G. B. If the genuine sense of the people could be collected on the several points comprehended in the occasion, the calamity would be greatly alleviated if not absolutely controuled. But this is scarcely possible. The Country is too much uninformed, and too inert to speak for itself; and the language of the towns which are generally directed by an adverse interest will insidiously inflame the evil. It is how-

ever of such infinite importance to our own Government as well as to that of France, that the real sentiments of the people here should be understood, that something ought to be attempted on that head. I inclose a copy of a train of Ideas [1] sketched on the first rumour of the war between the Ex & Genet, and particularly suggested by the Richmond Resolutions, as a groundwork for those who might take the lead in County meetings. It was intended that they should be modified in every particular according to the state of information and the particular temper

[1] It being consid[d] that it is at all times the right & at certain periods the duty of the people to declare their principles & opinions on subj[ts] which concern the Nat[l] inter[st], that at the pres[t] conjuncture this duty is rendered the more indispensable by the prevailing practice of decl[y] resol[ns], in places where y[e] inhab[ts] can more easily assemble & consult than in the Country at large, and where interests views & pol[l] opinions different from those of the great body of the people, may happen to predominate, whence there may be danger of unfair & delusive inferences concern[g] the true & general sense of the people. It being also consid[d] that under the disadvantage a great proportion of the people lab[r] in their distant & dispersed situation from the want of timely & correct knowledge of particular incidents, & the conduct of particular persons connected with public transactions, it is most prudent & safe, to wait with a decent reserve for full & satisfactory information in relation thereto, & in public declarations to abide by those great principles, just sentiments & establ[d] truths w[ch] can be little affected by personal or transitory occurrences:

Therefore as the sense of the pres[t] Meeting,

Res[d], That y[e] Constitution of the U. S. ought to be firmly & vigilantly supported ag[st] all direct or indirect attempts that may be made to subvert or violate the same:

That as it is the interest of the U. S. to cultivate the preservation of peace by all just and honable means, the Ex. Auth[y] ought to be supported in y[e] exercise of its const[l] powers & functions for enforcing the laws existing for y[t] purpose:

That y[e] eminent virtues & services of our illustrious fellow Citizen G. W. P. of U. S. entitle him to y[e] highest respect & last[g] gratitude of

of the place. A copy has been sent to Caroline with a hope that Mr. P. might find it not improper to step forward. Another is gone to the District Court at Staunton in the hands of Monroe, who carried a letter from me on the subject to A. Stuart; and a third will be for consideration at the District C^t^ at Charlottesville. If these examples should be set, there may be a chance of like proceedings elsewhere; and in themselves they will be respectable specimens of the principles and sensations of the Agricultural which is the commanding part of the Society. I am not

his Country, whose peace liby, & safety must ever remind it of his distingd agency in promoting the same.

That the eminent & generous aids rendd to the U. S. in their arduous struggle for liberty by the Fr Nation ought ever to be remd & ackd with gratitude & that the spectacle exhd by the severe & glorious contest in which it is now engaged for its own liberty, ought & must be peculiarly interesting to the wishes, the friendship & the sympathy of the people of America:

That all attempts which may be made in whatever form or disguise to alienate the good will of the people of Amera from the cause of liberty & republn Govt in F. have a tendency to weaken ye affection to the free principles of ye own Govt, and manifest designs wch ought to be narrowly watched & seasonably counteracted

That such attempts to disunite Nations mutually attachd to the cause of liberty, & viewed with unfriendly eyes by all who hate it, ought more particularly to be reprobated at the present crisis, when such vast efforts are making by a combination of Princes & Nobles to crush an example that may open the eyes of all mankind to their natl & pol rights:

That a dissolution of the honable & beneficial connection between the U. S. & F wd obviously tend to forward a plan of connecting ym with G. B., as one great leadg step towds assimilating our Govt to the form & spirit of the British Monarchy; and that this apprehension is greatly strengthd by the active zeal displayed by persons disaffected to the Amn Revn & by others of known Monarchl principles, in propagating prejudices agst the French Nation & Revolution.—*Mad. MSS.*

sanguine however that the effort will succeed. If it does not, the State Legislatures, and the federal also if possible, must be induced to take up the matter in its true point of view. Monroe & myself read with attention your despatch by D. R., and had much conversation on what passed between you & the P. It app^{d} to both of us that a real anxiety was marked to retain you in office, that over and above other motives, it was felt that your presence and implied sanction might be a necessary shield against certain criticisms from certain quarters; that the departure of the only counsellor possessing the confidence of the Republicans would be a signal for new & perhaps very disagreeable attacks; that in this point of view the respectful & conciliatory language of the P. is worthy of particular attention; and that it affords a better hope than has existed of your being able to command attention, and to moderate the predominant tone. We agreed in opinion also that whilst this end is pursued, it would be wise to make as few concessions as possible that might embarrass the free pursuit of measures which may be dictated by Repub^{n} principles & required by the public good. In a word we think you ought to make the most of the value we perceive to be placed on your participation in the Ex: Counsels. I am extremely glad to find that you are to remain another quarter. The season will be more apropos in several respects; and it will prevent any co-operation which a successor might be disposed to make towards a final breach with France. I have little hope that

you will have one whose policy will have the same healing tendency with yours. I foresee, I think, that it will be either King, if Johnson is put at the Treasury, or E. Rutlege, if Wolcot should be put there. I am glad the President rightly infers my determination from antecedent circumstances, so as to free me from imputations in his mind connected with the present state of things. Monroe is particularly solicitous that you should take the view of your present position & opportunities above suggested. He sees so forcibly the difficulty of keeping the feelings of the people as to Genet distinct from those due to his Constituents, that he can hardly prevail on himself, absolutely and *openly*, to abandon him. I concur with him that it ought to be done no farther than is forced upon us, that general silence is better than open denunciation and crimination; and that it is not unfair to admit the apologetic influence of the errors in our own Government which may have inflamed the passions which now discolor every object to his eye: such as the refusal in the outset of the Government, to favor the commerce of France more than that of G. B.; the unfortunate appointment of Gouv. M[orris] to the former; the language of the proclamation, the attempts of Pacificus to explain away & dissolve the Treaty, the notoriety of the author, and the appearance of its being an informal manifestation of the views of the Ex, &c.

I paid a short visit to Mr. W. [C.] N[icholas,] as I proposed. He talks like a sound Republican, and

sincere friend to the French cause in every respect. I collected from him that E. R. had admitted to him that he drew the Procl[n]; that he had been attacked on it at Chatham by Mr. Jos. Jones, that he reprobated the comment of Pacifi[cu]s, &c. W. N. observed that H[amilton] had taken the Ex, in, by gaining phrases, of which he could make the use he has done. The circumstances which derogate from full confidence in W. N. are 1[st] his being embarked in a variety of projects which call for money, and keep him in intercourse with the Merch[ts] of Rich[d] 2[d] his connection & intimacy with Marshal of whose *disinterestedness* as well as understanding he has the highest opinion. It is said, that Marshal who is at the head of the great purchase from Fairfax, has lately obtained pecuniary aids from the Bank or people connected with it. I think it certain that he must have felt, in the moment of purchase an absolute dependence on the monied interest, which will explain him to every one that reflects, in the active character he is assuming. I have been obliged to write this in great haste [*illegible*] bearer impatiently waiting the whole time.

I hope you have received the five N[os] of Hel[vidius]. I must resume the task I suppose in relation to the *Treaty* & *gratitude*. I feel however so much awkwardness under the new posture of things that I shall deliberate whether a considerable postponement at least may not be advisable. I found, also, on my return, a house full of particular friends who will stay some weeks and receive & return visits

from which I cannot decently exclude myself. If I s^d^ perceive it impossible or improper to continue the publication so as to avail myself of the channel used to the press, I shall suspend it till I see & talk with you on the whole matter.

Adieu.

TO JAMES MONROE. MAD. MSS.

Sep^r^ 15, 93.

DEAR SIR

Since I parted from you I have had several letters from Mr. J. in which all the *facts* involving Genet are detailed. His conduct has been that of a madman. He is abandoned even by his votaries in Philad^a^ Hutchison declares that he has ruined the Republican interest in that place. I wish I could forward the details I have rec^d^ but they are too confidential to be hazarded by the casual conveyance to which this is destined. They ought however to have no other effect on the steps to be pursued than to caution ag^st^ founding any of them on the presumed inculpability of Genet. As he has put himself on such unjustifiable ground, perhaps it is fortunate that he has done it in so flagrant a manner. It will be the more easily believed here that he has acted ag^st^ the sense of his Constituents, and the latter will be the less likely to support him in his errors. I find that the Anglicans & Monocrats from Boston to Philad^a^, are betrayed by the occasion into the most palpable discovery of their real views. They already lose

sight of the Agent; and direct their hostilities *immediately ag^st^ France.* This will do good, if proper use be made of it. You will see by the late papers that G. B. has made war on our commerce, by intercepting uncontraband articles bound to unblockaded ports, and taking them to herself at her own price. This must bring on a crisis with us, unless the order be revoked on our demand, of which there is not the least probability. I understand that the malignant fever in Philad^a^ is raging still with great violence; and all the inhabitants who can, are flying from it in every direction. The mortality at first was in the ratio of 3 out of 4. It had been reduced to 1 out of 3. Mr. J. is in raptures with the performance of our friend in C-l-n-e. He means to have it appear about two weeks before the meeting of C—s. This will not coincide with the plan of the Author, who wished its publication to be in time for the meeting of the State Legislature. Think of this & let me know your ideas. On my return home I found a letter from Mr. Jones w^ch^ I inclose, as the shortest way of making you acquainted with what he wishes. With all due respect to Mrs. Monroe,

I am Y^rs^ aff^ly^

TO GEORGE WASHINGTON. WASH. MSS.

ORANGE October 24th, 1793

DEAR SIR

Your letter of the 14th instant[1] did not arrive till sunday night, and being not then at home, I did not receive it till last night. I now lose not a moment in complying with its request; tho' I foresee it cannot reach you before you will have left Mount Vernon, and before you will probably have made up a final determination on some if not all the questions proposed. These are

1. Ought the President to summon Congress at a time and place to be named by him? or

2. If the President has no power to change the place, ought he to abstain from all interposition whatever? or

3. Ought he to notify the obstacle to a meeting at Philadelphia, state the defect of a regular provision for the exigency, and suggest his purpose of repairing to————as a place deemed most eligible for a meeting in the first instance?

4. What is the place liable to the fewest objections?

From the best investigation I have been able to make in so short a time, the first expedient, tho' most adequate to the exigency, seems to require an authority that does not exist under the Constitution and laws of the U. States.

The only passage in the Constitution in which

[1] Given in *Washington's Writings* (Ford), xii., 337. The fever ceased to ravage the city before Congress met, and no action on the President's part was necessary. This was the last opinion given by Madison to Washington. Their relations were no longer cordial.

such an authority could be sought is that which says "The President may, on extraordinary occasions, convene both Houses, or either of them." But the obvious import of these terms is satisfied by referring them to the time only at which the extraordinary meeting is summoned. If indeed they included a discretion as to the place as well as the time, it would be unnecessary to recur to the expedient of altering the time in order to get at an alteration of the place. The President could as well alter the place without interfering with the time, as alter the time without interfering with the place. Besides, the effect of a change as to place would not be in all respects similar to a change as to time. In the latter case, an extraordinary session, running into the period of an ordinary one, would allow the ordinary one to go on under all the circumstances prescribed by law. In the former case, this would not happen. The ordinary part of the Session would be held out of the place prescribed for it, unless prevented by a positive act for returning to it.

The obvious meaning here assigned to the phrase is confirmed by other parts of the Constitution. It is well known that much jealousy has always appeared in everything connected with the residence of the General Government. The solicitude of the Constitution to appease this jealousy is particularly marked by the 1st paragraph of section 6th & the 3d paragraph of section the 7th, of Article I. The light in which these paragraphs must be viewed cannot well be reconciled with a supposition that it was

meant to entrust the Executive alone with any power on that subject.

Laying aside the Constitution and consulting the law, the expedient seems to be no less inadmissible. The Act of July 1790 "establishing the temporary and permanent seat of the Government of the U. S." cannot be understood to leave any such power in the President. And as the power, if exercised so as to interfere with the provision relating to the temporary seat, might beget an alarm lest, in the hands of a President unfriendly to the permanent seat, it should be turned on some pretext or other against that arrangement, prudential reasons unite with legal ones for avoiding the precedent.

The 2^{d} mode of treating the difficulty would seem to be best, if the danger at German Town were out of the way. A voluntary resort to that place might be relied on; and the members of the Legislature finding themselves together and with the President might legalize the necessary steps; or if that should be thought wrong might deliberate and decide for themselves on the emergency. But as the danger might defeat such an expectation it results that,

The 3^{d} expedient is called for by the occasion; and, being sufficient, is all that can be justified by it.

The 4th point to be considered is the delicate one of naming the place.

In deciding this point, it would seem proper to attend *first* to the risk of the infection. This consideration lies, as you observe, against Trenton & Wilmington: secondly, to Northern and Southern

jealousies. This applies to N. York and Annapolis: thirdly to the disposition of Pennsylvania, which is entitled to some regard, as well by her calamity as by the circumstance of her being in possession of the Government.

In combining these considerations we are led to look for some place within the State of Pennsylvania not materially different from Philad[a] in relation to North and South. Lancaster and Reading appear to have occurred. With the former I am but little acquainted. The latter I never saw. If the object of the Executive should be merely to put Congress in the most neutral situation possible for choosing a place for themselves, as would have been the case at German Town, Reading seems to have the better pretensions. If the object should be to provide a place at once marking an impartiality in the Executive, and capable of retaining Congress during the Session, Lancaster seems to claim a preference.

If the measure which my present view of the subject favors should be deemed least objectionable, something like the following form might be given to it.

"Whereas a very dangerous and infectious malady which continues to rage in the City of Philad[a], renders it indispensable that the approaching Session of Congress should be held, as well as the Executive Department be for the present administered, at some other place; And whereas no regular provision exists for such an emergency, so that unless some other place be pointed out at which the members of Con-

gress may assemble in the first instance, great embarrassments may happen: Under these peculiar circumstances I have thought it incumbent on me to notify the obstacle to a meeting of Congress at the ordinary place of their Session; and to recommend that the several members assemble on the day appointed at ——— in the State of ———— at which place I shall be ready to meet them.

"G. W. P. U. S."

With sentiments of the highest respect and attachment I remain, Dear Sir, your affectionate humble servant

SPEECH ON DISCRIMINATING DUTIES—JANUARY 3, 1794.[1]

Mr. MADISON, after some general observations on the Report [of the Secretary of State on commerce], entered into a more particular consideration of the subject. He remarked,

[1] *Annals of Congress*, 3*d Cong.*, 1793–1795, 155. A test vote in Committee of the Whole showed that the House favored Madison's resolutions, but before they could be acted upon reports of fresh British outrages arrived and gave a more warlike turn to American legislation. Madison made a long and detailed explanation and defense of his resolutions, January 29. *Annals*, 566.

Joshua Barney and several other American captains detained in Jamaica wrote to him commending the resolutions, and Madison replied, May 1, 1794: "Having long regarded the principles on which those Resolutions were founded as the basis of a policy most friendly to the just interests of our country, and most honorable to its public councils, I cannot be insensible to the approbation they may obtain from my fellow-Citizens, and particularly from those more immediately attached to the prosperity of our commerce and navigation. Under this impression I have received the communication transmitted by you in such polite and friendly terms, and I hope it will be believed that I mingle with it all the sympathy which is due to the distresses of those who have been the victims of depredation."—*Mad. MSS.*

that the commerce of the United States is not, at this day, on that respectable footing to which, from its nature and importance, it is entitled. He recurred to its situation previous to the adoption of the Constitution, when conflicting systems prevailed in the different States. The then existing state of things gave rise to that Convention of Delegates from the different parts of the Union, who met to deliberate on some general principles for the regulation of commerce, which might be conducive, in their operation, to the general welfare, and that such measures should be adopted as would conciliate the friendship and good faith of those countries who were disposed to enter into the nearest commercial connexions with us. But what has been the result of the system which has been pursued ever since? What is the present situation of our commerce? From the situation in which we find ourselves after four years' experiment, he observed, that it appeared incumbent on the United States to see whether they could not now take measures promotive of those objects for which the Government was in a great degree instituted. Measures of moderation, firmness, and decision, he was persuaded, were now necessary to be adopted, in order to narrow the sphere of our commerce with those nations who see proper not to meet us on terms of reciprocity.

Mr. M. then read the following resolutions:

"*Resolved*, as the opinion of this committee, That the interest of the United States would be promoted by further restrictions and higher duties, in certain cases, on the manufactures and navigation of foreign nations employed in the commerce of the United States, than those now imposed.

"1. *Resolved*, as the opinion of this committee, That an additional duty ought to be laid on the following articles, manufactured by European nations having no commercial treaty with the United States: On all articles of which leather is the material of chief value, an additional duty of —— per centum *ad valorem;* on all manufactured iron, steel, tin, pewter, copper, brass, or articles of which either of these

metals is the material of chief value, an additional duty of —— per centum *ad valorem;* on all articles of which cotton is the material of chief value, an additional duty of —— per centum *ad valorem;* on all cloths of which wool is the material of chief value, where the estimated value on which the duty is payable, is above ——, an additional duty of —— per centum *ad valorem;* where such value is below ——, an additional duty of —— per centum *ad valorem;* on all cloths of which hemp or flax is the material of chief value, and of which the estimated value on which the duty is payable is below ——, an additional duty of —— per centum *ad valorem;* on all manufactures of which silk is the material of chief value, an additional duty of —— per centum *ad valorem.*

"2. *Resolved,* as the opinion of this committee, That an additional duty of —— per ton, ought to be laid on the vessels belonging to the nations having no commercial treaty with the United States.

"3. *Resolved,* as the opinion of this committee, That the duty on vessels belonging to the nations having commercial treaties with the United States, ought to be reduced to —— per ton.

"4. *Resolved,* as the opinion of this committee, That where any nation may refuse to consider as vessels of the United States, any vessels not built within the United States, the foreign built vessels of such nation ought to be subjected to a like refusal, unless built within the United States.

"5. *Resolved,* as the opinion of this committee, That, where any nation may refuse to admit the produce or manufactures of the United States, unless in vessels belonging to the United States, or to admit them in vessels of the United States, if last imported from any place not within the United States, a like restriction ought, after the —— day of ——, to be extended to the produce and manufactures of such nation, and that, in the mean time, a duty of —— per ton extraordinary ought to be imposed on vessels so importing any such produce or manufacture.

"6. *Resolved*, as the opinion of this committee, That, where any nation may refuse to the vessels of the United States a carriage of the produce or manufactures thereof, whilst such produce or manufactures are admitted by it in its own vessels it would be just to make the restriction reciprocal; but, inasmuch as such a measure, if suddenly adopted, might be particularly distressing in cases which merit the benevolent attention of the United States, it is expedient, for the present, that a tonnage extraordinary only of ——, be imposed on the vessels so employed; and that all distilled spirits imported therein shall be subject to an additional duty of one —— part of the existing duty.

"7. *Resolved*, as the opinion of this committee, That provision ought to be made for liquidating and ascertaining the losses sustained by citizens of the United States, from the operation of particular regulations of any country contravening the Law of Nations, and that such losses be reimbursed, in the first instance, out of the additional duties on the manufactures, productions, and vessels of the nation establishing such unlawful regulations."

Mr. M. took a general view of the probable effects which the adoption of something like the resolutions he had proposed, would produce. They would produce, respecting many articles imported, a competition which would enable countries who do not now supply us with those articles, to do it, and would increase the encouragement on such as we can produce within ourselves. We should also obtain an equitable share in carrying our own produce; we should enter into the field of competition on equal terms, and enjoy the actual benefit of advantages which nature and the spirit of our people entitle us to.

He adverted to the advantageous situation this country is entitled to stand in, considering the nature of our exports and returns. Our exports are bulky, and therefore must employ much shipping, which might be nearly all our own: our exports are chiefly necessaries of life, or raw materials, the

food for the manufacturers of other nations. On the contrary, the chief of what we receive from other countries, we can either do without, or produce substitutes.

It is in the power of the United States, he conceived, by exerting her natural rights, without violating the rights, or even the equitable pretensions of other nations—by doing no more than most nations do for the protection of their interests, and much less than some, to make her interests respected; for, what we receive from other nations are but luxuries to us which, if we choose to throw aside, we could deprive part of the manufacturers of those luxuries, of even bread, if we are forced, to the contest of self-denial. This being the case, our country may make her enemies feel the extent of her power. We stand, with respect to the nation exporting those luxuries, in the relation of an opulent individual to the laborer, in producing the superfluities for his accommodation; the former can do without those luxuries, the consumption of which gives bread to the latter.

He did not propose, or wish that the United States should, at present, go so far in the line which his resolutions point to, as they might go. The extent to which the principles involved in those resolutions should be carried, will depend upon filling up the blanks. To go to the very extent of the principle immediately, might be inconvenient. He wished, only, that the Legislature should mark out the ground on which we think we can stand; perhaps it may produce the effect wished for, without unnecessary irritation; we need not at first go every length.

Another consideration would induce him, he said, to be moderate in filling up the blanks—not to wound public credit. He did not wish to risk any sensible diminution of the public revenue. He believed that if the blanks were filled with judgment, the diminution of the revenue, from a diminution in the quantity of imports, would be counterbalanced by the increase in the duties.

The last resolution he had proposed, he said, is, in a manner,

distinct from the rest. The nation is bound by the most sacred obligation, he conceived, to protect the rights of its citizens against a violation of them from any quarter; or, if they cannot protect, they are bound to repay the damage.

It is a fact authenticated to this House by communications from the Executive, that there are regulations established by some European nations, contrary to the Law of Nations, by which our property is seized and disposed of in such a way that damages have accrued. We are bound either to obtain reparation for the injustice, or compensate the damage. It is only in the first instance, no doubt, that the burden is to be thrown upon the United States. The proper Department of Government will, no doubt, take proper steps to obtain redress. The justice of foreign nations will certainly not permit them to deny reparation when the breach of the Law of Nations appear evidently; at any rate, it is just that the individual should not suffer. He believed the amount of the damages that would come within the meaning of this resolution, would not be very considerable.

TO HORATIO GATES.[1]

PHILAD[A] Mar. 24. 1794

DEAR SIR

Your favor of the 19[th] has lain by me unanswered till I could give you the result of a proposition for an Embargo discussed for several days with shut doors. The decision did not take place till friday afternoon. The measure was then negatived by 48 ag[st] 46 votes. Those who took the lead in opposing it are now for transferring the power to the Executive even during the Session of Congress.

[1] From the Chamberlain MSS., Boston Public Library. The letter was in reply to one from Gates calling Madison, in consequence of his commercial resolutions, the coming man of America.

You will find in the newspapers the havoc made on our trade in the W. Indies. Every day adds new proofs of the ill will and contempt of G. B. towards us. Still I do not concur with those who see in these proceedings a design to make war in form. If she can destroy the branches of our commerce which are beneficial to her enemies, and continue to enjoy those which are beneficial to herself, things are in the best possible arrangement for her. War would turn the arrangement agst her by breaking up the trade with her, and forcing that with her enemies. I conclude therefore that she will push her aggressions just so far and no farther, than she imagines we will tolerate. I conclude also that the readiest expedient for stopping her career of depredation on those parts of our trade which thwart her plans, will be to make her feel for those which she cannot do without.

I have nothing to add to the newspaper details with respect to events in Europe. The campaign seems to have closed as triumphantly for the French Republic as the fears of its enemies could have foreboded. If that in the W. Indies should not exhibit a reverse of fortune, the public attention may possibly be called off from the French to "the British Revolution," you may then renew your prophetic wishes which have created a millenium under the auspices of the three great Republics. . . .

TO THOMAS JEFFERSON. MAD. MSS.

Mar: 26 1794

DEAR SIR

My last informed you that an embargo had been proposed & negatived. You will see by the inclosed that on a renewal of the proposition yesterday it went through the H. of Rep^s by a very large majority. The change took place among the Eastern members whose constituents were growing so clamorous under their losses in the W. Indies as to alarm the representatives. The Senate will have the subject before them today, and will probably concur. It is said that some further measures are to be discussed in that House. The Commercial propositions have not yet rec^d a vote. The progress of the evils which they were to remedy, having called for more active medicine, it has not been deemed prudent to force them on the attention of the House during more critical discussions. They will however notwithstanding a change of circumstances, co-operate with other measures as an alternative system and will be pressed to a vote at the first favorable moment. Whether they can be carried into a law at the present session is doubtful, on acc^t of the lateness of the day, and the superior urgency of other questions. The point immediately depending is the discrimination between G. B. and other nations as to the proposed duties on manufactures. If this should succeed, the future parts will I think meet with little difficulty. The enquiry into the Treasury is going on, tho' not very rapidly. I understand that

it begins to pinch where we most expected—the authority for drawing the money from Europe into the Bank. H endeavoured to parry the difficulty by contesting the right of the Committee to call for the authority. This failing he talks of constructive written authority from the P. but relies on parol authority, which I think it impossible the P. can support him in. The old question of referring the origination of Taxes comes on to-day; and will in some degree test the present character of the House. I have written an abundance of letters of late, but fear they are stopped by the small pox at Richmond.

The people of Charleston are taking a high tone. Their memorial, which is signed by Ramsay, the Gadzdens Young Rutledge and a very great number of respectable Citizens, marks the deliberate sense of her people. The more violent has been expressed by hanging & burning the effigies of Smith Ames Arnold, Dumouriez & the Devil, *en groupe*.

TO THOMAS JEFFERSON. MAD. MSS.

PHIL^{A} Ap^{l} 28, 1794.

DEAR SIR

. . . The non-importation bill has passed the H. of Rep^{s} by 59 agst 34. It will probably miscarry in the Senate. It prohibits all articles of British or Irish production after the 1st Nov^{r}, until the claims of the U. S. be adjusted and satisfied. The appointment of H. as envoy Extr^{y} was likely to produce such a sensation that to his great mortification he

was laid aside & Jay named in his place. The appointment of the latter would have been difficult in the Senate, but for some adventitious causes. There were 10 votes agst him in one form of the opposition and 8 on the direct question. As a resignation of his Judiciary character might, for anything known to the Senate, have been intended to follow his acceptance of the Ex. trust, the ground of incompatibility could not support the objections, which, since it has appeared that such a resignation was no part of the arrangement, are beginning to be pressed in the Newspapers. If animadversions are undertaken by skilful hands, there is no measure of the Ex. administration perhaps that will be found more severely vulnerable.

The English prints breathe an unabated zeal for the war agst France. The Minister carries everything as usual in Parl^{t} notwithstanding the miscarriages at Toulon &c; and his force will be much increased by the taking of Martinique, and the colouring it will give to the W. India prospects. Nothing further appears as to the views prevailing in relation to us. The latter acc^{ts} from the W. Ind^{s} since the new Instruction of Jan^{y} 8 are rather favorable to the Merchants, & alleviate their resentments; so that G. B. seems to have derived from the excess of her aggressions a title to commit them in a less degree with impunity. The French arms continue to prosper, tho' no very capital event is brought by the latest arrivals.

TO JAMES MADISON. MAD. MSS.

PHILAD^A May 4 1794

HON^D SIR

By a vessel which sails for Fred^g to-day I have sent a small box containing the following articles 6 p^s very coarse muslins, 1 p^s of finer, 2^lb of Tea, 3 Books on Medicine & a few pamphlets, a sett of marking instruments. The muslins were bought as being extremely cheap, and useful for various purposes. If my mother or sister wants any part of them they will make free with them. If the finer piece should not be applicable to any better purpose, I allotted it for shirts, in which it is said to wear as well as linnen. The coarser p^s I supposed might be dealt out in parts to my negro women if thought proper as far as would give them each some kind of garment. The cost would be a trifle and they w^d probably be better pleased than with some thing in the ordinary way of greater value. I wish however that use may be made of them as already hinted. The coarse p^s cost about 4 dol^s each. The fine one ab^t 4*s*. V^a Curr^y a yard. The two books by Hamilton are for D^r. Taylor whom you will ask to accept of them. The other by Waller I send for yourself. It is said to be an able performance. If Dr. Taylor on perusal of it sh^d wish a copy, I will forward one for him. You will find that I have recovered the pamphlet by the French Chymist on the mineral waters of Virg^a. The Squash seed is of the same kind with that inclosed lately in a letter.

As I retain the conviction I brought from home

in fav[r] of the Mill at my brothers, I have been endeavoring to dispose of the piece of land on the Mohawk river.[1] But the acc[t] I have of it embarrasses me. I perceive that by selling it now, I shall get 40 or 50 per C[t] less than it will probably fetch in a year or two. I am assured by *correct & authentic* information that it is of the best quality, that the country is rapidly settling all around it. That the navigation of the river will soon be opened, and that at a very few miles distance land of the same quality sells for 8 or 10 dollars an acre. Within three miles lotts in a town lately laid out sell for £50 an acre and are with difficulty got for that. I can not at present get more than 4 or 5 doll[rs] an acre. The gentleman who gave me my information is a respectable lawyer residing within three miles of the land and intimately acquainted with it as well as with that part of the Country. He writes me that within 2 years past similar lands have risen at least 50 per C[t] & that the prospect of future rise is at least as great. Notwithstanding these favorable circumstances I am so much disposed to forward the plan of the Mill which I view as particularly favorable to the interest of my brothers as well as myself, that If a pursuit of it depends materially on my contribution, I shall not hesitate to make the sacrifice. Whether this be the case you can best

[1] Madison sold the tract, about 900 acres, to Theodorus Bailey and John B. Van Wyck for five dollars an acre, January 5, 1796.—*Mad. MSS.* See his letter to Jefferson, August 12, 1786. *Ante*, vol. ii., p. 265.

decide & I will thank you for a line on the subject immediately on the receipt of this. Perhaps your funds may be competent to the demands of the present year. I am persuaded also that notwithstanding the low rate of the [illegible] paper, there would be less loss in your sale of that than I should suffer from the present sale of the land.

The bill for suspending importations from G. B. & Ireland which passed the H of Rep^{s} by 59 agst 34 was rejected in the Senate, who are determined to rely on the extraordinary mission of Jay to sue for satisfaction. The H. of Rep^{s} are occupied with new taxes to defray the expence of the naval armament, the fortifications &c. An increase of the impost, a stamp tax, further excises and a land tax are all proposed. I much fear that the aversion to the last will soon involve this Country in the pernicious revenue system of Europe and without ultimately avoiding the thing dreaded, as a land tax will be sure to be added on the first great occasion that may arise. It is not certain how much longer the session will be spun out. I hope it will end at farthest within the present month. If I should determine to make above mentioned, I shall probably be obliged to make a trip to New York before I return to Virginia.

TO THOMAS JEFFERSON. MAD. MSS.

PHILAD^{A}, May 25, 1794.

DEAR SIR

Your fav^{r} of the 15th Inst: came to hand yesterday. I will procure you the "definition of parties"

and one or two other things from the press which merit a place in your archives. Osnabrigs can be had here. Negro Cotton I am told can also be had: but of this I am not sure. I learn nothing yet of Blake.

The inclosed paper will give you the correspondence of E. R. & Hammond on an occurrence particularly interesting. You will be as able to judge as we are of the calculations to be founded on it. The embargo expires to-day. A proposition some days ago for continuing it was negatived by a vast majority; all parties in the main concurring. The Republican was assured that the Embargo if continued would be considered by France as hostility. The other had probably an opposite motive. It now appears that throughout the Continent the people were anxious for its continuance, & it is probable that its expiration will save the W. Ind^{s} from famine, without affording any sensible aid to France. A motion was put on the table yesterday for re-enacting it. Measures of this sort are not the fashion. To supplicate for peace, and under the uncertainty of success, to prepare for war by taxes & troops is the policy which now triumphs under the patronage of the Executive. Every attack on G. B. thro' her comerce is at once discomfited; & all the taxes, that is to say excises, stamps, &c. are carried by decided majorities. The plan for a large army has failed several times in the H. of Rep^{s}. It is now to be sent from the Senate, and being recommended by the Message of the P., accompanying the intelligence from the Miami, will probably succeed.

The influence of the Ex. on events, the use made of them, and the public confidence in the P. are an overmatch for all the efforts Republicanism can make. The party of that sentiment in the Senate is compleatly wrecked; and in the H. of Rep^s^ in a much worse condition than at an earlier period of the Session.[1]

TO THOMAS JEFFERSON. MAD. MSS.

PHILAD^A^, June 1, 1794.

DEAR SIR

The stamp act was poisoned by the ingredient of the tax on transfers. The sentinels of stock uniting with the adversaries of the general plan formed a large majority. The Carriage tax which only struck at the Constitution has passed the H. of Rep^s^ and will be a delicious morsel to the Senate.[2] The attempt of this Branch to give the P. power to raise

[1] The tension between the parties in Congress had become so great that Rufus King, Senator from New York, on May 11 proposed to John Taylor of Caroline, Senator from Virginia, that they agree on the terms of a peaceful dissolution of the Union. Taylor and Madison, to whom the conversation was reported, would not agree, and Madison thought King's proposal was made "probably in terrorem." See *Disunion Sentiment in Congress in* 1794 (Hunt), Washington, 1905, in which Taylor's memorandum of the conversation with King and Oliver Ellsworth is given.

[2] The law laying a tax on carriages was passed June 5. In 1796 its constitutionality was tested before the Supreme Court, and the Court decided that being an indirect tax it was constitutional. Judge Samuel Chase, a fiery federalist, closed his opinion with this sentence: "As I do not think the tax on carriages is a *direct* tax, it is unnecessary, *at this time*, for me to determine, whether this court, *constitutionally* possesses the power to declare an act of Congress *void*, on the ground of its being made contrary to, and in violation of, the Consti-

an army of 10,000, if he should please, was strangled more easily in the H. of Rep^s^ than I had expected. This is the 3^d^ or 4^th^ effort made in the course of the Session to get a powerful military establishment, under the pretext of public danger and under the auspices of the P^ts^ popularity. The bill for punishing certain crimes &c. including that of selling prizes has been unexpectedly called up at the last moment of the Session. It is pretended that our Citizens will arm under French colors if not restrained. You will be at no loss for the real motive, especially as explained by the circumstances of the present crisis. The bill for complying with Fauchèt's application for a million of dollars passed the H. of Rep^s^ by a large majority. The Senate will certainly reject it. Col. M. is busy in preparing for his embarkation. He is puzzled as to the mode of getting to France. He leans towards an American vessel, which is to sail from Baltimore for Amsterdam. A direct passage to F. is scracely to be had, and is incumbered with the risk of being captured & carried into England. It is not certain that Negro Cotton can be had here. German linens of all

tution; but if the Court have such power, I am free to declare, that I will never exercise it, *but in a very clear case.*" 3 *Dallas*, 171.

Madison wrote to Jefferson, March 6, 1796, concerning the case:

"The Court has not given judgment yet on the Carriage tax. It is said the Judges will be unanimous for its constitutionality. Hamilton & Lee advocated it at the Bar, ag^st^ Campbell & Ingersoll. Bystanders speak highly of Campbells argument, as well as of Ingersoll's. Lee did not shine, and the great effort of his coadjutor as I learn, was to raise a fog around the subject, & to inculcate a respect in the Court for preceding sanctions in a doubtful case."—*Mad. MSS.*

sorts can. Nothing of Blake. Tomorrow is the day of adjournment as fixed by the vote of the two Houses; but it will probably not take place till the last of the week. We have had 8 or 10 days of wet weather from the N. E. which seems at length to be breaking up.

Yrs Affy

TO JAMES MONROE. MAD. MSS.

PHILADA, Decr 4, 1794.

DEAR SIR

I did not receive your favor of Sepr 2d, the only one yet come to hand, till yesterday. The account of your arrival and reception had some time ago found its way to us thro' the English Gazettes. The language of your address to the Convention was certainly very grating to the ears of many here; and would no doubt have employed the tongues and the pens too of some of them, if external as well as internal circumstances had not checked them; but more particularly, the appearance about the same time of the Presidents letter and those of the Secretary of State.[1] Malicious criticisms if now made at all are confined to the little circles which relish that kind of food. The sentiments of the P. will be best communicated by Mr. R. You are right in your conjecture, both as to the facility given to the Envoy Extry by the triumphs of France, and the artifice of referring it to other causes. The prevailing idea here is that the Mission will be successful, tho' it is

[1] See *Writings of Monroe* (Hamilton), ii., 11 *et seq.*

scarcely probable that it will prove so in any degree commensurate to our rights, or even to the expectations which have been raised: Whilst no industry is spared to prepare the public mind to eccho the praises which will be rung to the address of the Negociator, and the policy of defeating the commercial resolutions proposed at the last session. It will not be easy however to hide from the view of the judicious & well disposed part of the community that every thing that may be obtained from G. B. will have been yielded by the fears inspired by those retaliating measures, and by the state of affairs in Europe.

You will learn from the Newspapers and official communications the unfortunate scene in the Western parts of Penn[a] which unfolded itself during the recess.[1] The history of its remote & immediate causes, the measures produced by it, and the manner in which it has been closed, does not fall within the compass of a letter. It is probable also that many explanatory circumstances are yet but imperfectly known. I can only refer to the printed accounts which you will receive from the Department of State, and the comments which your memory will assist you in making on them. The event was in several respects a critical one for the cause of liberty, and the real authors of it, if not in the service, were in the most effectual manner, doing the business of Despotism. You well know the general tendency of insurrections to increase the momentum of power.

[1] The Whiskey Rebellion.

You will recollect the particular effect of what happened some years ago in Massach^ts. Precisely the same calamity was to be dreaded on a larger scale in this Case. There were eno' as you may well suppose, ready to give the same turn to the crisis, and to propagate the same impressions from it. It happened most auspiciously however that with a spirit truly Republican, the people every where and of every description condemned the resistance of the will of the Majority, and obeyed with alacrity the call to vindicate the authority of the laws. You will see, in the answer of the House of Rep^s to the P's speech, that the most was made of this circumstance, as an antidote to the poisonous influence to which Republicanism was exposed. If the insurrection had not been crushed in the manner it was I have no doubt that a formidable attempt would have been made to establish the principle that a standing army was necessary for *enforcing the laws*. When I first came to this City about the middle of October, this was the fashionable language. Nor am I sure that the attempt would not have been made if the P. could have been embarked in it, and particularly if the temper of N. England had not been dreaded on this point. I hope we are over that danger for the present. You will readily understand the business detailed in the Newspapers, relating to the denunciation of the "self-created Societies." [1] The introduction of it by the Presi-

[1] "The very forbearance to press prosecutions was misinterpreted into a fear of urging the execution of the laws; and associations of men began to denounce threats against the officers employed. From

dent was perhaps the greatest error of his political life. For his sake, as well as for a variety of obvious reasons, I wished it might be passed over in silence by the H. of Rep^s^. The answer was penned with that view and so reported. This moderate course

a belief, that, by a more formal concert, their operation might be defeated, *certain self-created* societies assumed the tone of condemnation."—Washington's speech to Congress, November 19, 1794. *Writings* (Ford), xii., 491.

November 20, Madison, Sedgwick, and Scott were appointed to draft the reply to the speech. Madison drew it up and presented it November 21. It was in the customary formal, colorless style, but an attempt was made to introduce into it a clause denouncing the "self-created societies," which failed. Madison spoke in opposition, November 27:

. . . He conceived it to be a sound principle, that an action innocent in the eye of the law could not be the object of censure to a Legislative body. When the people have formed a Constitution, they retain those rights which they have not expressly delegated. It is a question whether what is thus retained can be legislated upon. Opinons are not the objects of legislation. You animadvert on the abuse of reserved rights: how far will this go? It may extend to the liberty of speech, and of the press. It is in vain to say that this indiscriminate censure is no punishment. If it falls on classes, or individuals, it will be a severe punishment. He wished it to be considered how extremely guarded the Constitution was in respect to cases not within its limits. Murder, or treason, cannot be noticed by the Legislature. Is not this proposition, if voted, a vote of attainder? To consider a principle, we must try its nature, and see how far it will go: in the present case, he considered the effects of the principle contended for would be pernicious. If we advert to the nature of Republican Government, we shall find that the censorial power is in the people over the Government, and not in the Government over the people. As he had confidence in the good sense and patriotism of the people, he did not anticipate any lasting evil to result from the publications of these societies; they will stand or fall by the public opinion; no line can be drawn in this case. The law is the only rule of right: what is consistent with that, is not punishable; what is not contrary to that, is innocent, or at least not censurable by the Legislative body.

With respect to the body of the people, (whether the outrages have proceeded from weakness or wickedness,) what has been done, and will

would not satisfy those who hoped to draw a party advantage out of the P's popularity. The game was, to connect the democratic Societies with the odium of the insurrection—to connect the Republicans in Cong[s] with those Societies—to put the P. ostensibly at the head of the other party, in opposition to both, and by these means prolong the illusions in the North, & try a new experiment on the South. To favor the project, the answer of the Senate was accelerated & so framed as to draw the P. into the most pointed reply on the subject of the Societies. At the same time the answer of the H. of R. was procrastinated till the example of the Senate, & the commitment of the P. could have their full operation. You will see how nicely the House was divided, and how the matter went off. As yet, the discussion has not been revived by the newspaper combatants. If it should and equal talents be opposed, the result cannot fail to wound

be done by the Legislature, will have a due effect. If the proceedings of the Government should not have an effect, will this declaration produce it? The people at large are possessed of proper sentiments on the subject of the insurrection; the whole Continent reprobates the conduct of the insurgents; it is not, therefore, necessary to take the extra step. The press, he believed, would not be able to shake the confidence of the people in the Government. In a Republic, light will prevail over darkness, truth over error: he had undoubted confidence in this principle. If it be admitted that the law cannot animadvert on a particular case, neither can we do it. Governments are administered by men: the same degree of purity does not always exist. Honesty of motives may at present prevail, but this affords no assurance that it will always be the case. At a future period, a Legislature may exist of a very different complexion from the present: in this view we ought not, by any vote of ours, to give support to measures which now we do not hesitate to reprobate. . . .

the P's popularity more than anything that has yet happened. It must be seen that no two principles can be either more indefensible in reason, or more dangerous in practice—than that—1. arbitrary denunciations may punish what the law permits, & what the Legislature has no right by law, to prohibit—and that 2. the Govt may stifle all censure whatever on its misdoings, for if it be itself the Judge it will never allow any censures to be just, and if it can suppress censures flowing from one lawful source it may those flowing from any other—from the press and from individuals, as well as from Societies, &c.

The elections for the H. of Reps are over in N. Eng. & Pa. In Masts they have been contested so generally as to rouse the people compleatly from their lethargy, tho' not sufficiently to eradicate the errors which have prevailed there. The principal members have been all severely pushed; several changes have taken place, rather for the better; and *not one* for the worse. In Pa Republicanism claims 9 out of 13, notwithstanding the very disadvantageous circumstances under which the election was made. In N. Y. it is expected the proportion of sound men will be increased. In Maryland, the choice has been much as heretofore. Virga & N. C. will probably make no changes for the worse. In the former, Mr. Griffin resigns his pretensions. Mr. Lee will probably either do so or be dropped by his Constituents. In S. Carolina the death of Gillon will probably let in Mr. Barnwell. In

Delaware Patton is elected, in lieu of Latimer. On the whole the prospect is rather improved than otherwise. The election of Swanwick as a Republican, by the Commerical & political Metropolis of the U. S. in preference to Fitzsimmons is of itself of material consequence, and is so felt by the party to which the latter belongs. For what relates to the Senate I trust to the letters which you will receive from Brown & Langdon, whom I have apprized of this opportunity of answering yours. I shall observe only that Tazewell & S. Tho: Mason were elected by the most decided majorities, to fill your vacancy and that of Col. Taylor who gave in his resignation. Not a single Anti-republican was started. Mr. Dawson was a candidate and got 40 votes agst 122. Brooke is also Gov^{r} by a pretty decided vote. He had 90 odd, agst 60 odd given to Wood, his only competitor.

I had a letter lately from Mr. Jefferson. He has been confined by the Rheumatism since August, and is far from being entirely recovered. Mr. T. M. Randolph has also been in a ticklish situation. What it is at present I cannot say. Mr. Jones was well a few days ago. He was then setting out to Loudon where he has made a great purchase of land from Col. Chs. Carter. I infer from his letters to me that you are included in it. He will no doubt write you fully on that subject, or more probably has written already.

I have not rec^{d} anything from Wilkinson, nor from Vermont; nor heard anything relating to your interests in N. York. I have given notice to Mr. Yard

and Doc^{r} Stephen, of this conveyance and expect both will write. Mrs. Heilager is also here on her way to St. Croix and will no doubt write to Mrs. Monroe. She tells me all friends are well in N. York. I hope her letter will give all the particulars which may be interesting.

When in Albemarle last fall I visited your farm along with Mr. Jefferson, and viewed the sites out of which a choice is to be made for your house. The one preferred by us is that which we favored originally on the East side of the road, near the field not long since opened. All that could be suggested by way of preparation was, that trees be planted promiscuously & pretty thickly in the field adjoining the wood. In general your farm appeared to be as well as was to be expected. Your upper farm I did not see, being limited in my stay in that quarter.

I have just seen Mr. Ross, who tells me he has rec^{d} your letter. He would write by this opportunity but wishes to be more full than the time will permit. We expect another will offer in a few weeks when we shall all continue our communications. I should say more to you now, if I could say it in cypher.

Present my best respects to Mrs. Monroe and Eliza, and tell them I shall be able on their return to present them with a new acquaintance who is prepared by my representations to receive them with all the affection they merit, & who I flatter myself will be entitled to theirs. The event which puts this

in my power took place on the 15th of Sep[r]. [1] We are at present inhabitants of the House which you occupied last winter & shall continue in it during the session. With my sincerest wishes for your happiness and that of your amiable family, I remain affectionately.

Hamilton has given notice that he means to resign. Knox means to do the same. It is conjectured that the former will contend for the Gov[t] of N. York. Burr will be the competitor.

TO THOMAS JEFFERSON. MAD. MSS.

PHILAD[A], Dec[r] 21, 1794.

DEAR SIR

Your favor of the 9th, by the Orange post arrived here on the 18th; that of the 12 by the Richmond post, on the 20th so that it appears the latter was one day less on the way. It is to be remarked however that as the Orange post leaves Charlottesville on tuesday he might easily be in Fredericksburg on thursday, in time for the mail which passes thro' it on that day to Dumfries. If this despatch is not required of him it ought to be. It would make a difference of two days in the journey. Or at least the post might wait a day in Charlottesville

[1] Madison and Dolly Payne Todd were married by Rev. Dr. Balmaine, an Episcopal clergyman of Winchester, Va., a cousin of Madison's, on September 15, 1794, at "Harewood," near Charlestown, W. Va., the estate of George Steptoe Washington, a nephew of General Washington's, and the husband of Mrs. Madison's sister.

and be in time for the saturday's mail at Fredericksburg.

Our weather here has been as fine as you describe yours. Yesterday there was a change. It was cold, cloudy, and inclined to snow. To-day we have a bright day, and not very cold. Prices here are very different from yours. Wheat is at 13 or 14*s*. & flour in proportion. In general, things are 50 Per C^{t} beyond the prices of last winter. The phenomenon you wish to have explained is as little understood here as with you; but it would be here quite unfashionable to suppose it needed explanations. It is impossible to give you an idea of the force with which the tide has set in a particular direction. It has been too violent not to be soon followed by a change In fact I think a change has begun already. The danger will then be of as violent a reflux to the opposite extreme.

The attack made on the essential & constitutional right of the Citizen in the blow levelled at the "self-created Societies," does not appear to have had the effect intended. It is and must be felt by every man who values liberty whatever opinions he may have of the use or abuse of it by those institutions. You will see that the appeal is begun to the public sentiment by the injured parties. The Republican society of Baltimore set the example. That of Newark has advertised a meeting of its members. It is said that if Edw^{d} Livingston, as is generally believed, has outvoted Watts for the H. of Rep^{s} he is indebted for it to the invigorated exer-

tions of the Democratic society of that place, of which he is himself a member. In Boston the subject is well understood, and handled in the Newspapers on the republican side with industry & address.

The elections in Mass^{ts} have turned out rather better than was of late expected. The two republican members have stood their ground; in spite of the most unexampled operations agst them. Ames is said to owe his success to the votes of negroes & British sailors smuggled under a very lax mode of conducting the election there. Sedgwick & Goodhue have *bare* majorities. Dexter is to run another heat, but will succeed; Gerry, his only considerable competitor, & who would outvote him, refusing to be elected. There are several changes in the remainder of the Delegation, and some of them greatly for the better. In New York there will be at least half republicans; perhaps more. It has unluckily happened that in 2 Districts two *republicans* set up agst one Anti. The consequence is that a man is re-elected who would not otherwise have taken the field; and there is some danger of a similar consequence in the other district. In N. Jersey, it is said that not more than one of the old members will be returned. The people all over the State are signing with avidity a remonstrance against the high salaries of the Gov^{t}.

Hamilton is to resign, according to his own notification the last of Feb^{y}. His object is not yet unfolded. Knox as the shadow follows the sub-

stance. Their successors are not yet designated by any circumstance that has escaped.

What think you of a project to disfranchise the insurgent Counties by a bill of exclusion agst their Rep^{s} in the State Legislature? The object is to pave the way for Bingham or Fitzsimmons as Senator, & to give an example for rejecting Galatin in the H. of Rep^{s} at the next Congress of which he is a member. The proposition has been laid on the table and the event is uncertain. There is some probability the violence of the measure may defeat it; nor is it certain I am told that if carried thro' it would answer the purpose of its authors.

TO THOMAS JEFFERSON. MAD. MSS.

PHILAD^{A}, Jan^{y} 26, 95.

DEAR SIR,—I have received your favor of Dec^{r} 28, but till three weeks after the date of it. It was my purpose to have answered it particularly, but I have been robbed of the time reserved for the purpose. I must of consequence limit myself to a few lines and to my promise given to the Fresco Painter to forward you the enclosed letter. Nothing since my last from Jay or Monroe. The Newspapers as usual teem with French victories and rumors of peace. There seem to be very probable indications of a progress made to this event, except in relation to G. B. with whom a Duet Campaign is the cry of France. The Naturalization has not yet got back

from the Senate.[1] I understand however it will suffer no material change. They have the prudence not to touch the nobility clause. The House of Rep^s^ are on the Military estab^t^ & the public debt. The difficulty & difference of opinion as to the former produced a motion to request the P. to cause an estimate of the proper defence &c. It was in its real meaning, saying we do not know how many troops ought to be provided by our legislative duty, and ask your direction. It was opposed as opening the way for dragging in the weight of the Ex. for one scale on all party questions—as extorting his opinion which he sh^d^ reserve for his negative, and as exposing his unpopular opinions to be extorted at

[1] This was the second naturalization law, approved January 29, 1795, which introduced the five years' residence previous to naturalization and the declaration of intention three years before. It required also that good character and attachment to the Constitution be established, and that any title of nobility the applicant might bear must be renounced. This act was really the parent of our naturalization system, and its chief author was Madison. The debate extended from December 22, 1794, to January 8, 1795, Madison making several short speeches. In the course of the debate (January 1) on the clause requiring renunciation of titles, Dexter of Massachusetts opposed it, and ridiculed certain tenets of the Catholic religion, declaring that priestcraft had done more harm than aristocracy. Madison replied: ". . . He did not approve the ridicule attempted to be thrown out on the Roman Catholics. In their religion there was nothing inconsistent with the purest Republicanism. In Switzerland about one-half of the Cantons were of the Roman Catholic persuasion. Some of the most Democratical Cantons were so; Cantons where every man gave his vote for a Representative. Americans had no right to ridicule Catholics. They had, many of them, proved good citizens during the Revolution. As to hereditary titles, they were proscribed by the Constitution. He would not wish to have a citizen who refused such an oath."—*Annals*, 3^d^ Cong., 1035.

any time by an unfriendly majority. The prerogative men chose to take the subject by the wrong handle, and being joined by the weak men, the resolution passed. I fancy the Cabinet are embarrassed on the subject. On the subject of the Debt, the Treasury faction is spouting on the policy of paying it off as a great evil, and laying hold of two or three little excises past last session under the pretext of war, of claiming more merit for their zeal than they allow to the opponents of their (pecuniary) resources. Hamilton has made a long Valedictory Rep^{t} on the subject. It is not yet printed, & I have not read it. It is said to contain a number of improper things. He got it in by informing the Speaker he had one ready, predicated on the actual revenues, for the House, when they sh^{d} please to receive. Berdinot the ready agent for sycophantic jobs, had a motion cut & dry just at the moment of the adjournment, for informing him in the language applied to the P. on such occasions, that the House was ready to receive the Rep^{t} when he pleased, which passed without opposition & almost without notice. H gives out that he is going to N. Y. and does not mean to return into public life at all.—N. Jersey has changed all her members except Dayton, whose zeal agst G. B. saved him. There are not more than 2 or 3 who are really on all points Repub^{ns} Dexter is under another sweat in his district, and it is said to be perfectly uncertain whether he or his Rival competitor will succeed.

Adieu Y^{rs}

TO JAMES MADISON. MAD. MSS.

Feby 23. 1795.

Hon.p Sir

Inclosed is the explanation from the offices concerning Mr L's claim.—The Treaty made by Mr Jay is not yet come to hand & we know nothing more of its articles than what has been conjectured from the hints in the News papers. I have already let you know that if you mean that I sh.d sell your paper you must forward the proper power. The period is becoming favorable. It can now be sold at par, as I shall not be able to get off for some time after the adjournment, you may venture to write & communicate with me till I give you notice that your letters will be too late. If you, my mother or Fanny want any particular articles to be got let me know it. I understand it is reported in some parts of my District that I decline being a candidate in March. Perhaps I ought on many considerations to do so—but I have said nothing from which the Report could spring, and find myself constrained again to sacrifice both my inclination and interest. If you have an opportunity of seeing or dropping a few lines to any particular friend in Louisa (say Mr A. Fontaine) I should therefore be glad you would contradict the Report, as well as let it be known that it is not in my power to be in the district before the election as I would wish. I rely on you & my brother W. to give the proper explanations in Orange & Madison Counties—Congs will adjourn on the 3.d of March— Yr Affe Son

TO ROBT. R. LIVINGSTON.[1] MAD. MSS.

August 10, 1795.

D^R^ SIR

Your favour of july 6. having been address^d^ to Williamsburg, instead of *Orange C. Ho[u]se*, did not come to hand till two day ago. Your gloomy Picture of the Treatys does not exceed my Ideas of it.[2] After yealding terms which would have been scorned by this Country in the moment of its greatest embarrissments, & of G. Britain's full enjoyment of peace & confidence, it adds to the ruinous bargain with this Nation a disqualification to make a good one with any other. In all our other Treaties it has been carefully stipulated that the Nation to be treated as the most favored Nations & to come in for all new privileges that may be granted by the

[1] The letter is not in Madison's hand, but some corrections in its body are.

[2] The treaty was concluded November 19, 1794, reached the United States soon after the adjournment of Congress, March 3, 1795, and was laid before the Senate in special session June 8. It was ratified June 24, with an amendment, providing that Article XII. be suspended. This article stipulated that American commerce with the West Indies should be restricted to American ports, and that British vessels engaged in West Indian commerce should have equal rights with American vessels in American ports. The Senate adjourned June 26. On June 12, four days after the treaty was laid before the Senate, and while it was still a secret document, Pierce Butler, Senator from South Carolina, wrote to Madison that he would send him by each post a sheet of the treaty till he had received the whole. He was to show it to Jefferson alone. He asked Madison to give him the benefit of his free opinion of the treaty (*Mad. Mss.*). Stevens Thomson Mason, Senator from Virginia, gave a copy of the treaty to *The Aurora*, which printed it June 30, one day before it was to have been made public by Washington.

U. States, must pay for them the same or an equivalent price with the Grantee. The proposed Treaty with G. B., disregarding this obvious rule of justice & equality, roundly agrees that no duty restriction or prohibition with respect to ships or merchandize shall be applied to G. B., which do not operate on all other nations (see Art. XV). should any other Nation therefore, be disposed to give us the most precious & peculiar advantages in their trade, in exchange for the slightest preferences in ours, this Article gives G. B. a negative on the transaction; unless it be so modified as to let her in for the favour without paying the price of it. But what Nation would be willing to buy favours for another; especially when the Inducement to buy & the value of the purchase might depend on the peculiarity of the favour. it must be seen at once that this extraor dinary feature would monopolize us to G. B., by precluding any material improvement of our existing Treaties, or the hope of any new ones that would be of much advantage to us. That so insidious an article should have occurred to lord Grenville's jealousy of the U. S. & his policy of barring their connection with other Countries & particularly with the French republic, can surprise no one The concurrence of the American Envoy may not be so easily explained, but it seems impossible to screen him from the most illiberal suspicions without referring his conduct to the blindest partiality to the British Nation & Gov^{t} & the most vindictive sensations towards the F^{h} Republic. Indeed, the Treaty

from one end to the other must be regarded as a demonstration that the Party to which the Envoy belongs & of which he has been more the organ than of the U. S., is a British party systematically aiming at an exclusive connection with the British Govern^{t} & ready to sacrifice to that object as well the dearest interests of our commerce as the most sacred dictates of National honour. this is the true Key to this unparalleled proceeding, & can alone explain it to the impartial & discerning part of the Public. the leaders of this Party stand *self condemned* in their efforts to paliate the Treaty by magnifying the necessity of the British commerce to the U. S. & the insufficiency of the U. S. to influence the regulation of it. you will find on turning to a Pamphlet addressed to your people by Mr. Jay when the Federal Constitution was before them, that he then could see our power under such a Constitution to extort what we justly claimed from G. B., & particularly to open the W. India ports to us. as an Agent for the Constitution he now voluntarily abandons; the very object which as an advocate for the Constitution he urged as an argument for adopting it,—read also the Paper N°. XI in the Publication entitled the Federalist for the view of the subject then inculcated by another advocate,—it is with much Pleasure I assure you that the sentiments & voice of the People in this State, in relation to the attempt to Prostrate us to a foreign & unfriendly Nation, are as decided & as loud as could be wished. many, even of those who have hitherto rallied to the

most exceptionable Party measures, join in the general indignation agst the Treaty. the few who hold out will soon be under the Dilimma of following the example or of falling under imputations which must disarm them of all injurious influence. you will see by the N. papers that the City of Richmond has trodden in the steps of the other Cities by an unanimous address to the President. You will remark that our chancellor, Mr. Wythe, presided in the meeting, a circumstance which will draw the more attention to it, as he is not only distinguished for his moderation of character; but was President of the Meeting which addressed the P. in support of his proclamation of Neutrality. How far the other Towns & Counties will Imitate Richmond is uncertain. If they should be silent, it will assuredly be the effect in the former of a supposed notoriety of their harmony in opposition, &, in the latter to the same cause added to the dispersed situation of the People. I think it certain, that there is not a Town or county in this State (except perhaps Alexandria) where an Appeal to the Inhabitants would be attended with any show of opposition. You will readily conclude therefore that *here*, the *Public* do not need the measure to which you report. With respect to the P. his situation must be a most delicate one for himself as well as for his Country; & there never was, as you observe, a crisis where the friends of both ought to feel more solicitude or less reserve. At the same time, I have reasons, which I think good for doubting the Propriety & of course utility

of uninvited communications from myself. He cannot, I am persuaded, be a stranger to my oppinion on the merits of the Treaty; & I am equally persuaded that the state of the Public oppinion within my sphere of information will sufficiently force itself on his Attention.

It is natural eno' for the Apologists of the Treaty to lay hold of the Doctrine maintained by Mr. Jefferson but whether that Doctrine be right or wrong, they might be reminded that he expressly urges the Policy of guarding agst it instead of establishing it by Treaty. the appeal to him therefore must add to their condemnation. See his letter to Mr. G. Morris explaining the discussions with Mr. Genet.

With respect &c &c.

TO ——— ———[1]. MAD. MSS.

ORANGE, Augst 23, 1795

DEAR SIR

Your favor of the 3d instant did not come to hand till a few days ago, having been probably retarded by the difficulty the post met with in passing the water-courses which have been much swelled of late by excessive rains. It gives me much pleasure to learn that your health has been so much improved;

[1] The letter is a rough draft and a blank is left in the original for the name of the person to whom it was sent. In the New York Public Library (Lenox) there is another draft, also in Madison's hand, of the greater part of the letter. (See note 1, p. 244.) It is probable, therefore, that the letter was sent in substance to several of Madison's correspondents.

as well as that you are taking advantage of it to co-operate in elucidating the great subject before the public. We see here few of the publications relating to it, except those which issue from meetings of the people, & which are of course republished everywhere. The only Philad[a] paper that comes to me is the Aurora w[ch] besides frequent miscarriages, is not I find the vehicle used by the regular champions on either side. I have occasionally seen Dunlap's, & in that some specimens of the Display of the "Features &c." I wish much to see the whole of it. Your obliging promise to forward it along with any other things of the kind, will have a good opportunity by the return of Mr. Wilson Nicholas who is on his way to Phil[a] & will call on me on his way home. I requested the favour of him to apprize you of the opportunity. I am glad to find that the author of the "Features &c." meditates a similar operation on "The Defence of the Treaty by Camillus "[1] who if I mistake not will be betrayed by his anglomany into arguments as vicious & as vulnerable as the Treaty itself. The Resolutions of the Chamber of Commerce in N. Y. justify this anticipation. What can be more absurd than to talk of the advantage of securing the *privileges* of sending raw materials to a manufacturing nation, and of buying merchandizes which are hawked over the four quarters of the globe for customers. To say that we must take the Treaty or be punished with hostilities is something

[1] Hamilton. See the letters in Hamilton's *Works* (Lodge), IV., 371.

still worse. By the way, it is curious to compare the language of the author & abettors of the Treaty, with that held on the subject of our commercial importance, when the Constitution was depending. Jay himself could then view its adoption as the only thing necessary to extort the Posts, &c., and *open the W. India Ports.* (See his address to the people of N. Y. in the Museum.) The Federalist (N°. XI) will exhibit a still more striking contrast on this point, in another quarter.—You intimate a wish that I w^d^ suggest any ideas in relation to the Treaty that may occur to my reflections.[1] In my present se-

[1] Among the Madison MSS. is a statement not in Madison's hand, but doubtless written from a draft of his (dated August, 1795), relating to the treaty especially with reference to the British debts. It says that no law of any State passed since the treaty of 1783 had released the American debtor from any of his debts. Delays of payment and insolvencies had taken place. The treaty of 1794, however, settled that he was to bear the consequence of his own laches. Resolved into convenient shape the treaty of 1782 provided that the following things were to be done: (1) Great Britain was to acknowledge the absolute independence of the United States. This was the *sine qua non* of opening negotiations. (2) Hostilities were to cease on both sides. (3) Peace was to be an accomplished fact by the delivery to the United States of certain parts of the country then held by Great Britain. This stipulation had not been fulfilled by Great Britain. (4) In evacuating the posts the British forces were to abstain from certain descriptions of injurious acts, which had before taken place upon the evacuation of posts held by them for a time in America. This had not been carried out in the matter of the negroes whom the enemy carried with him when he evacuated. (5) When all of these things had been done, then, and not until then, were the British owners and late owners of certain descriptions of property to meet with no lawful impediment to the recovery of the same. (6) When these stipulations had been carried out, certain persons were to receive the benefit of Congressional recommendations for the recovery of claims against citizens of the United States. (7) There were cer-

questered situation I am too little possessed of the particular turns of the controversy to be able to adapt remarks to them. In general I think it of importance to avoid laying too much stress on minute or doubtful objections which may give an occasion to the other party to divert the public attention from the palpable and decisive ones, and to involve the question in uncertainty, if not to claim an apparent victory. The characteristics of the Treaty which I have wished to see more fully laid open to the public view are 1. its ruinous tendency with respect to the carrying trade. The increase of our shipping under the new Gov^{t} has, in most legislative discussions, been chiefly ascribed to the advantage given to American vessels by the difference of 10 Per C^{t} on the impost in their favor. This, in the valuable cargoes from G. B. has been sufficient to check the preference of British Merch^{ts} for British bottoms; and it has been not deemed safe hitherto by G. B. to force on a contest with us, in this particular, by any countervailing regulations.

tain other stipulations affecting national and local rights, such as those concerning the fisheries and the Mississippi, at present untouched.

Great Britain had acknowledged our independence, hostilities had ceased, but she had evacuated but one place (New York) held by her when the treaty was framed, and in doing so had repeated the designated acts of injury from which she was required by the treaty to refrain. Putting this question aside, however, it could be correctly stated that, as long as the armed troops of one country occupied fortified places within the territory of another, peace was not in fact restored, and such being the case the demand of the British debts could not be legally made. A state of war still existed and British creditors were alien enemies, as they must continue to be until the British troops abandoned the posts they invasively occupied.

In consequence of the Treaty, she will no doubt establish such regulations; and thereby leave the British capital free to prefer British vessels. This will not fail to banish our tonnage from the trade with that Country. And there seems to have been no disposition in the Negociator to do better for our navigation in the W. India trade; especially if the exclusion of our vessels from the re-exportation of the enumerated articles Sugar Coffee &c be taken into the account. The nature of our exports & imports compared with that of the British, is a sufficient, but at the same time our only defence agst the superiority of her capital. The advantage they give us in fostering our navigation ought never to have been abandoned. If this view of the subject be just and were presented to the public with mercantile skill, it could not fail to make a deep impression on England. In fact the whole Treaty appears to me to assassinate the interest of that part of the Union.—2 the insidious hostility of the Treaty to France in general; but particularly the operation of the 15th article, which as far as I have seen has been but faintly touched on, tho it be in fact, pregnant with more mischief than any of them. According to all our other Treaties as well as those of all other nations, the footing of the most favored nations is so qualified, that those entitled to it, must pay the price of any particular privilege that may be granted in a new Treaty. The Treaty of Jay makes every new privilege result to G. B., without her paying any price at all. Should France, Spain, Portu-

gal or any other nation offer the most precious privileges in their trade, as the price of some particular favour in ours, no bargain could be made, unless they would agree, not only to let the same favor be extended to G. B., but extended gratuitously. They could not purchase for themselves, without at the same time purchasing for their rival. In this point of view, the 15th art. may be considered as a direct bar to our Treating with other nations, and particularly with The French Republic. Much has been said of a suspected backwardness to improve our com^{l} arrangements with France; and a predilection for arrangements with G. B., who had less to give, as well as less inclination to give what she had. It was hardly imagined that we were so soon to grant every thing to G. B. for nothing in return; and to make it a part of this bad bargain with her, that we should not be able to make a good one with any other nation. 3. the spirit in which every point of the law of nations is regulated. It is the interest of the U. S. to enlarge the rights of Neutral nations. It is the general interest of humanity that this sh^{d} be done. In all our other Treaties this policy has prevailed. The same policy has pervaded most of the modern Treaties of other nations. G. B. herself has been forced into it in several of her Treaties. In the Treaty of Jay, every principle of liberality, every consideration of interest has been sacrificed to the arbitrary maxims which govern the policy of G. B. Nay a new principle has been created, in the face of former complaints of our Executive. As well as

against the fundamental rights of nations & duties of humanity, for the purpose of aiding the horrible scheme of starving a whole people out of their liberties.

[1] I Even waiving the merits of the respective complaints & pretensions of the two parties as to the inexecution of the Treaty of peace, the waiver implies that the two parties were to be viewed either as equally culpable or equally blameless; and that the execution of the Treaty of peace equally by both ought now to be provided for. Yet, whilst the U. S. are to comply in the most ample manner with the article unfulfilled by them, and to make compensation for whatever losses may have accrued from the delay; G. B. is released altogether from one of y^e^ articles unfulfilled by her and is not to make the smallest compensation for the damages which have accrued from her delay to execute the other.[2]

The inequality of these terms is still further increased by concessions on the part of the U. S. which, besides adding to the Constitutional difficulties unnecessarily scattered thro' the Treaty, may in a great measure defeat the good consequences of a surrender of the Western posts.[3]

The British Settlers and Traders, within an unde-

[1] From this paragraph to the end, the MS. in the New York Public Library (Lenox) is the same, with a few variations indicated in these notes.

[2] In the Lenox MS. this sentence is added: "These equitable and reciprocal claims of the U. S. are not even allowed the chance of arbitration."

[3] The Lenox MS. adds: ". . . if that article of the treaty sh^d^ be faithfully executed by G. Britain."

fined Tract of Country, are allowed to retain both their lands and their allegiance at the same time; and consequently to keep up a foreign and unfriendly influence over the Indians within the limits of the U. States.

The Indians within those limits are encouraged to continue their trade with the British by the permission to bring their goods duty free from Canada; where the goods being charged with no such impost as is payable on the goods of the U. S., will be offered for sale with that tempting preference; a regulation but too likely also to cloak the frauds of smuggling traders in a country favorable to them. The reciprocity in this case is ostensible only and fallacious.

Under another ostensible & fallacious reciprocity the advantage secured to the U. S. in the fur trade by their possession of the carrying places is abandoned to the superiority of British Capital, and the inferiority of the Canada duties on imports.

A part only of the ports harbors & bays of a single British Province is made free to the U. S., in consideration of a freedom of all the ports harbors and bays of the whole U. S. The goods and merchandize of the U. S., not entirely prohibited by Canada (but which in fact are always entirely prohibited, when partial & temporary admissions are not dictated by necessity,) may be carried there, in consideration, of a free admission of all goods and merchandize from Canada not entirely prohibited by the U. S. (where, in fact there never is this entire prohibition.) A like stipulation, liable to the like observations, is

extended to the exports of the U. S. and the Province of Canada. These are further instances of a nominal & delusive reciprocity.

In the case of the Mississippi there is not even an ostensible or nominal reciprocity. The ports and places on its Eastern side, are to be equally free to both the parties; altho' the Treaty itself supposes that the course of the Northern Boundary of the U. S. will throw the British beyond the very source of that river. This item of the Treaty is the more to be noticed, as a repetition and extension of the stipulated privileges of G. B. on the Mississippi, will probably be construed into a partiality in the U. S. to the interests and views of that Nation on the American Continent, not likely to conciliate those from whom an amicable adjustment of the navigation of the Mississippi is to be expected; and were no doubt intended by G. B. as a snare to our good understanding with the nations most jealous of her encroachments & her aggrandizement.

II Without remarking on the explicit provision for redressing past spoliations & vexations, no sufficient precautions are taken against them in future. On the contrary,

By omitting to provide for the respect due to sea letters passports and certificates and for other customary safeguards to neutral vessels, "a general search-warrant, (in the strong but just language of our fellow Citizens of Charlestown) is granted against the American navigation." Examples of such provisions were to be found in our other Treaties, as well

as in the Treaties of other nations. And it is matter of just surprise that they should have no place in a Treaty with G. B. whose conduct on the seas so particularly suggested and enforced every guard to our rights that could reasonably be insisted on.

By omitting to provide against the arbitrary seizure & impressment of American seamen, that valuable class of Citizens remains exposed to all the outrages, and our commerce to all the interruptions hitherto suffered from that cause.

By expressly admitting that provisions are to be held contraband in cases other than when bound to an invested place, and impliedly admitting that such cases exist at present; not only a retrospective sanction may be given to proceedings agst which indemnification is claimed; but an apparent license is granted to fresh and more rapacious depredations on our lawful commerce. And facts seem to shew that such is to be the fruit of the impolitic concession. It is conceived that the pretext set up by G. B., of besieging and starving whole Nations, and the doctrine grounded thereon, of a right to intercept the customary trade of Neutral nations, in articles not contraband, ought never to have been admitted into a Treaty of the U. S.; because 1. it is a general outrage on humanity, and an attack on the useful intercourse of Nations. 2. it appears that the doctrine was denied by the Executive in the discussions with Mr. Hammond, the British Minister, and demands of compensation founded on that denial are now depending. 3 As provisions constitute not less than

of our exports, and as Great Britain is nearly half her time at war, an admission of the doctrine sacrifices a correspondent proportion of the value of our commerce. 4. After a public denial of the doctrine, to admit it, in the midst of the present war by a formal Treaty, would have but too much of the effect as well as the appearance of voluntarily concurring in the scheme of distressing a nation in friendship with this Country, and whose relations to it, as well as the struggles for freedom in which they are engaged, give them a title to every good office not strictly forbidden by the duties of neutrality. 5. It is no plea for the measure to hold it up as an alternative to the disgrace of being involuntarily treated in the same manner, without a faculty to redress ourselves; the disgrace of being plundered with impunity agst our consent being under no circumstances, greater than the disgrace of consenting to be plundered with impunity; more especially as the calamity in the former case might not happen in another war, whereas in the latter case it is bound upon us for as much of twelve years, as there may be of war within that period.

By annexing to the implements of war, enumerated as contraband, the articles of ship-timber, tar or rosin, copper in sheets, sails, hemp & Cordage, our neutral rights and national interests are still further narrowed. These articles were excluded by the U. S. from the contraband list, when they were themselves in a state of war.[1] Their other Treaties ex-

[1] "See Ordinance regulating captures in 1781."—Note in Madison's hand.

pressly declare them not to be contraband. British Treaties have done the same. Nor, as is believed, do the Treaties of any nation in Europe, producing these articles for exportation, allow them to be subjects of confiscation. The stipulation was the less to be admitted as the reciprocity assumed by it is a mere cover for the violation of that principle, most of the articles in question, being among the exports of the U. S. whilst all of them are among the imports of G. B.

By expressly stipulating with G. B. against the freedom of enemy's property in neutral bottoms, the progress towards a compleat & formal establishment of a principle in the law of nations so favorable to the general interest and security of Commerce, receives all the check the U. S. could give to it. Reason & experience have long taught the propriety of considering free ships, as giving freedom to their cargoes. The several great maritime nations of Europe have not only established it at different times by their Treaties with each other, but on a solemn occasion (the armed neutrality) jointly declared it to be the law of Nations by a specific compact, of which the U. S. entered their entire approbation.[1] G. B. alone dissented: But she herself, in a variety of prior Treaties, & in a Treaty with France since, [1786], has acceded to the principle. Under these circumstances, the U. S., of all nations, ought to be the last to unite in a retrograde effort on this subject, as being more than any other interested in extending

[1] The Lenox MS. adds: "[See their act of 5 Oct. 1780.]"

& establishing the commercial rights of neutral Nations. Their situation particularly fits them to be carriers for the great nations of Europe during their wars. And both their situation & the genius of their Government & people promise them a greater share of peace and neutrality than can be expected by any other nation. The relation of the U. S. by Treaty on this point to the enemies of G. B. was another reason for avoiding the stipulation. Whilst British goods in American vessels are protected agst French & Dutch capture, it was eno' to leave French & Dutch goods in American Vessels to the ordinary course of Judicial determinations, without a voluntary, a positive, and an invidious provision for condemning them. It has not been overlooked that a clause in the Treaty proposes to renew, at some future period, the discussion of the principle it now settles; but the question is then to be not only in what, but whether in any cases, neutral vessels shall protect enemy's property; and it is to be discussed at the same time, not whether in any, but in what cases provisions & other articles, not bound to invested places, may be treated as contraband. So that when the principle is in favor of the U. S., the principle itself is to be the subject of discussion; when the principle is in favor of G. B., the application of it only is to be the subject of discussion.

III Whenever the law of nations comes into question the result of ye Treaty accommodates G. B. in relation to one or both of the Republics at war with

her, as well as in diminution of the rights and interests of the U. S.

Thus American vessels, bound to G. B. are protected by sea papers agst French or Dutch searches; bound to France or Holland, are left exposed to British searches, without regard to such papers.

British property in American Vessels is not subject to French or Dutch confiscation: French or Dutch property in American vessels is subjected to British confiscation.

American provisions in American vessels, bound to the Enemies of G. B., are left by Treaty to the seizure and use of G. B.; provisions whether American or not, in American vessels, cannot be touched by the Enemies of G. B.

Timber for ship-building, tar or rosin, copper in sheets, sails, hemp & cordage, bound to the enemies of G. B., for the equipment of vessels of trade only, are contraband; bound to G. B. for the equipment of vessels of war, are not contraband.

American citizens entering, as volunteers the service of F. or Holland agst G. B. are to be punished; American volunteers joining the arms of G. B. agst F. or H. are not punishable.

British Ships of war and privateers, with their prizes made on Citizens of Holland, may freely enter & depart the ports of the U. S. Dutch Ships of war and privateers with their prizes made on subjects of G. B. are to receive no shelter or refuge in the ports of the U. S. And this advantage in war is given to G. B., not by a Treaty prior & having no relation,

to an existing war; but by a Treaty made in the midst of war, and prohibiting a like article of Treaty with Holland for equalizing the advantage.

The article prohibiting confiscations & sequestrations, is unequal between the U. S. & G. B. American Citizens have little if any interest in public or bank Stock or in private debts within G. Britain. British subjects have a great interest in all within the U. S. Vessels & merchandize belonging to individuals, governed by the same "confidence in each other & in regard to their respective Govts for their municipal laws, and for the laws of nations allowed to be part thereof as consecrates private debts," are not exempted from such proceedings. So that where much would be in the power of the U. S. and little in the power of G. B., the power is interdicted. Where more is in the power of G. B. than of the U. S., the power is left unconfined. Another remark is applicable. When the modern usage of nations, is in favor of G. B., the modern usage is the rule of the Treaty. When the modern usage was in favor of the U. S., the modern usage was rejected as a rule for the Treaty.

IV The footing on which the Treaty places the subject of Commerce is liable to insuperable objections.

1. The nature of our exports & imports, compared with those of other Countries, and particularly of G. B., has been thought by the Legislature of the U. S. to justify certain differences in the tonnage & other duties in favor of American bottoms; and the advantage possessed by G. B. in her superior capital

was thought at the same time to require such countervailing encouragements. Experience has shewn the solidity of both these considerations. The American navigation has, in a degree been protected against the advantage on the side of British Capital, and has increased in proportion. Whilst the nature of our exports, being generally necessaries or raw materials, and of our imports consisting mostly of British manufactures, has restrained G. B. from any attempt to counteract the protecting duties afforded to our navigation. Should the Treaty go into effect, this protection is relinquished; Congress are prohibited from substituting any other; and the British Capital, having no longer the present inducement to make use of American Bottoms may be expected, *thro' whatever hands operating*, to give the preference to British Bottoms.

2. The provisions of the Treaty which relate to the W. Indies, where the nature of our exports and imports gives a commanding energy to our just pretensions, instead of alleviating the general evil, are a detail of peculiar humiliations and sacrifices. Nor is a remedy, by any means to be found in the proposed suspension of that part of the Treaty. On the contrary;

If Great Britain should accede to the proposition; and the Treaty be finally established without the twelfth article, she will, in that event, be able to exclude American bottoms altogether from that channel of intercourse, and to regulate the whole trade with the W. Indies in the manner hitherto

complained of; whilst by another article of the Treaty, the U. S. are compleatly dispossessed of the right & the means hitherto enjoyed of counteracting the monopoly, unless they submit to a universal infraction of their trade, not excepting with nations whose regulations may be reciprocal and satisfactory.

3. The treaty, not content with these injuries to the U. S. in their commerce with G. B., provides in the XV article against the improvement or preservation of their commerce with other nations, by any beneficial Treaties that may be attainable. The general rule of the U. S. in their Treaties, founded on y^e^ example of other nations has been, that where a nation is to have the privileges that may be granted to the most favored nations, it should be admitted gratuitously to such privileges only as are gratuitously granted; but should pay for privileges not gratuitously granted the compensations paid for them by others. This prudent & equitable qualification of the footing of the most favored nation was particularly requisite in a Treaty with G. B., whose commercial system, being matured & settled, is not likely to be materially varied by grants of new privileges that might result to the U. S. It was particularly requisite at the present juncture also when an advantageous revision of the Treaty with France is said to be favored by that Republic; when a Treaty with Spain is actually in negociation, and Treaties with other nations whose commerce is important to the U. S. cannot be out of contemplation. The proposed Treaty, nevertheless, puts G. B. in all

respects, *gratuitously*, on the footing of the most favored nation; even as to future privileges for which the most valuable considerations may be given. So that it is not only out of the power of the U. S. to grant any peculiar privilege to any other nation, as an equivalent for peculiar advantages in commerce or navigation to be granted to the U. S.; but every nation, desiring to treat on this subject with the U. S. is reduced to the alternative either of declining the treaty altogether, or of including G. B., *gratuitously*, in all the privileges it purchases for itself. An article of this import is the greatest obstacle, next to an absolute prohibition, that could have been thrown in the way of other Treaties; and that it was insidiously meant by G. B. to be such, is rendered the less doubtful, by the other kindred features visible in the Treaty.

It can be no apology for these commercial disadvantages, that better terms could not be obtained at the crisis when the Treaty was settled. If proper terms could not be obtained at that time, commercial stipulations, which were no wise essentially connected with the objects of the Envoyship ought to have waited for a more favorable season. Nor is a better apology to be drawn from our other Treaties. The chief of These, were the auxiliaries or the guaranties of our independence, and would have been an equivalent for greater commercial concessions than were insisted on. (Under other circumstances, there is no ground to suppose, that the same treaties, tho' more favorable in several material articles than the

Treaty in question, would have been embraced by the U. S.[1])

V A Treaty thus unequal in its conditions, thus derogatory to our national rights, thus insidious in some of its objects, and thus alarming in its operation to the dearest interests of the U. S. in their commerce and navigation, is in its present form unworthy the voluntary acceptance of an Independent people, and is not dictated to them by the circumstances in which providence has kindly placed them. It is sincerely believed, that such a Treaty would not have been listened to at any former period, when G. B. was most at her ease, and the U. S. without the respectability they now enjoy. To pretend that however injurious the Treaty may be it ought to be submitted to in order to avoid the hostile resentment of G. B. which w^d^ evidently be as impolitic as it would be unjust on her part, is an artifice too contemptible to answer its purpose. It will not easily be supposed, that a refusal to part with our rights without an equivalent will be made the pretext of a war on us; much less that such a pretext will be founded on our refusal to mingle a sacrifice of our commerce & navigation with an adjustment of political differences. Nor is any evidence to be found, either in History or Human nature, that nations, are to be bribed out of a spirit of encroach^t^ & aggressions by humiliations which nourish their pride, or by concessions which extend their resources & power.

To do justice to all nations; to seek it from them

[1] This sentence does not appear in the Lenox MS.

by peaceable means in preference to war; and to confide in this policy for avoiding that extremity; or securing the blessing of Heaven, when forced upon us, is the only course of which the United States can never have reason to repent.

TO JAMES MONROE. MAD. MSS.

PHILAD^A, Dec^r 20, 1795

DEAR SIR,

The last of your favors come to hand bears date Sept^r 8, 1795, of which a duplicate has also been received. The others which it may be proper to acknowledge or reacknowledge are of Nov^r 30th, 1794, which was opened at Halifax, & forwarded to me in that state,—Dec^r 18, 1794, covering a copy of one of the same date to Mr. *Randolph;* Feb^y 18, 1795, covering a copy of one of Feb^y 12 to the same,—Feb^y 25, covering a duplicate of ditto,—June 13, inclosing a copy of a letter of May 4, from Mr. Short,—June 3–28–30,–July 26, covering the correspondence with *Jay;* and August 15.—As I cannot now give minute answers to each of these letters, & the necessity of them as to most has been superseded, I shall proceed to the object most immediately interesting to you, to wit the posture of things here resulting from the embassy of Mr. Jay. The Treaty concluded by him did not arrive till a few days after the 3d of March which put an end to the last session of Cong^s. According to previous notification to the Senators that branch assembled on the 28th of June,

the contents of the Treaty being in the mean time impenetrably concealed. I understood it was even withheld from the Secretaries at War & the Treasury, that is Pickering & Wolcot. The Senate, after a few weeks consultation, ratified the Treaty as you have seen. The injunction of secrecy was then dissolved by a full House, and quickly after restored sub modo, in a thin one. Mr. Mason disregarding the latter vote sent the Treaty to the press, from whence it flew with an electric velocity to every part of the Union. The first impression was universally & simultaneously against it. Even the mercantile body, with the exception of Foreigners and demi-Americans, joined in the general condemnation. Addresses to the P. agst his ratification, swarmed from all quarters, and without a possibility of preconcert, or party influence. In short it appeared for a while that the latent party in favor of the Treaty, were struck dumb by the voice of the Nation. At length however, doubts began to be thrown out in New York, whether the Treaty was as bad as was represented. The Chamber of commerce proceeded to an address to the P., in which they hinted at war as the tendency of rejecting the Treaty, but rested the decision with the constituted authorities. The Boston Chamber of Commerce followed the example, as did a few inland villages. For all the details on this subject I refer to the Gazettes, which I presume you continue to receive from the Department of State. It appears that the struggle in the public mind was anxiously contemplated by the President,

who had bound himself first not to disclose the Treaty till it should be submitted to the Senate, and in the next place, not to refuse his sanction if it should receive that of the Senate. On the receipt here, however of the predatory orders renewed by G. B., the President as we gather from Mr. Randolph's pamphlet [1] was advised not to ratify the Treaty unless they should be revoked and adhered to this resolution, from the adjournment of the Senate, about the last of June till the middle of August. At the latter epoch Mr. Fauchet's intercepted letter became known to him, and as no other circumstance on which a conjecture can be founded has been hinted to the public, his change of opinion, has been referred to some impression made by that letter, or by comments upon it, altho' it cannot easily be explained how the merits of the Treaty, or the demerits of the provision order could be affected by the one or the other. As soon as it was known that the P. had yielded his ratification the [2] *Br party* were *reinforced* by *those who bowed to* the *name of constituted authority*, and *those who are implicitly devoted to the Pr. Principal Merchants of Philad*^{a}, with *others amounting to ab*^{t} *four hundred*, took the *lead in an address of approbation*. There is good reason to believe that *many subscriptions* were *ob*^{td} by *the Banks, whose directors solicited them* and *by the influence of Br capitalists*. In *Baltimore Charleston*, & the *other*

[1] "A Vindication of Mr. Randolph's Resignation," Philadelphia, 1795. Samuel H. Smith. Randolph resigned August 19.

[2] Italics for cypher.

commercial towns, except *Philad^a*, *New York*, *& boston*, no similar proceeding has *been attainable. Acquiescence has been* inculcated with the *more success by exaggerated pictures of the public prosperity*, an *appeal to the popular feeling for the President*, and *the bugbear of war;* still, *however there is* little *doubt that the real sentiment of the mass of the community is hostile to the treaty.* How *far it may prove impregnable*, must be left to *events.* A good deal will *depend on the result of the session*, & more than *ought, on external contingencies.* You will see how the Session opened in the President's Speech & the answer to it.[1] That you may judge the better on the subject, I add in the margin of the latter, the clause expunged, as not true in itself, and as squinting too favorably at the Treaty. This is the only form in which the pulse of the House has been felt. *It is pretty certain that a majority disapproves the Treaty* but it is not *yet possible to ascertain their*

[1] The sentence to which the Republicans objected was: ". . . in justice to our own feelings, permit us to add the benefits which are derived from your presiding in our councils, resulting as well from *the undiminished confidence* of your fellow-citizens, as from your zealous and successful labors in their service." Madison wished to bring a less pronounced clause before the House, but Sitgreaves and Sedgwick overruled him. Josiah Parker, of Virginia, flatly declared that his confidence in the President *was* diminished, others that the confidence of a part of the people was diminished. On December 17th the House adopted the following, written by Madison:

"In contemplating that spectacle of national happiness which our country exhibits, and of which you, Sir, have been pleased to make an interesting summary, permit us to acknowledge and declare the very great share which your zealous and faithful services have contributed to it, and to express the affectionate attachment which we feel for your character."—Annals, 4th Cong., 1st Sess., 155.

ultimate object, as *matters now are*. The *Speech of the Pr* was *well adapted to his* view. The *answer* was from a *Committee, consisting of myself, Sedgwick, & Sitgrove*, in the first *instance*, with the addition of *two other members* on the *recommitment*. In the first *committee, my two colleagues* were *of the Treaty party;* and, in the *second, there was a* willingness to *say all* that *truth w^d^ permit*. This explanation will assist you in comprehending the transaction.

Since *the answer, as passed*, & was *presented, no* has been said or *done in relation to the Treaty*. It is much to be *feared that the majority against the Treaty* will be *broken to pieces* by *lesser & collateral differences*. Some *will say it is too* soon *to take up the* subject *before it is officially presented in its finished form;* others *will then say it is too late*. The opportunity of *declaring the sense of the House* in the *answer to the speech* was *sacrificed to the* opinion of *some, from whom more decision* was expected than will be *experienced* towards an *immediate consideration of the subject by itself*. The truest *policy seems to be, to take up the business as soon as a majority* can *be ascertained; but not to risk that* event *on a preliminary question*. What the *real state of opinions may be, is* now *under enquiry*. *I am* not *sanguine* as to *the result*. There is a clear *majority who disapprove the Treaty*, but it *will dwindle* under the *influence of causes well known to* you; *more especially as the States*, instead of *backing the wavering*, are themselves *rather giving way*. *Virginia* has indeed *set a firm example;* but *Maryland, North Carolina, & New Hampshire*, have

counteracted it, & New York will soon *follow with some strong proceedings* on *the same side.*

I am glad to find *by your letters that Fr, notw the late Treaty,* continues *to be friendly.* A magnanimous conduct will *conduce to her interest as well as ours.* It must *ult baffle the insidious projects* for *bartering our honour* and our *Trade to Br pride & Br monopoly.* The *fifteenth article of the Treaty* is evidently meant to *put Br on a better footing than Fr & prev[t] a* further *Treaty with the latter;* since it secures to *Br, gratuitously, all privileges* that *may be granted to others for an equivalent,* and of *course obliges Fr,* at *her sole expense, to include the* interest *of Br in her future treaties with us.* But if the *Treaty should take effect,* this *abominable part* will be of *short duration,* and, in the mean time, something may perhaps, may *be done,* tow[d] *disconcerting the mischief in some degree.* You will *observe a navigation act is* always *in our power.* The *article relating to the Mississippi,* being *permanent,* may be *more embarrassing,* yet possibly not *without some antidote for its poison.* I intended to go on in Cypher, but the tediousness obliges me to conclude the present letter, in order to seize a conveyance just known to me. Mr. R's pamphlet is just out. Mr. Tazewell will send that & several other things collected for you by this conveyance. Pickering is Secretary of State—Ch[s] Lee Attorney Gen[l]; no Sec[y] at War. The Senate have negatived Rutledge as chief Justice. Mr. Jones keeps you informed of your private affairs.—He & Mr. Jefferson are well. I have just rec[d] your two favors of Oct[r] 23 & 24,

with the accompaniments, by Mr. Murray. The articles have probably not arrived in the same ship, as Mr. Yard has no information from N. Y. thereon. Accept from Mrs. M. & myself ten thousand thanks for your & Mrs. Monroe's goodness, which will, as generally happens probably draw more trouble upon you. Mr. Yard & Mrs. Y. well,—Your friends at New York so, too.

THE JAY TREATY. SPEECH IN THE 4TH CONGRESS, APRIL 6.[1]

Mr. MADISON rose, and spoke as follows: When the Message was first proposed to be committed, the proposition had been treated by some gentlemen not only with levity but with ridicule. He persuaded himself that the subject would appear in a very different light to the Committee; and he hoped that it would be discussed on both sides without either levity, intemperance, or illiberality.

If there were any question which could make a serious appeal to the dispassionate judgment, it must be one which respected the meaning of the Constitution; and if any Constitutional question could make the appeal with peculiar

[1] *Annals of Cong.*, 4th Cong., 1st Sess., 772.

The Senate's amendment to the treaty having been accepted by the British government it was finally proclaimed by the President, February 29, 1796. On March 1 he sent a copy to each House of Congress. March 2 Edward Livingston offered his resolutions calling upon the President for copies of the instructions given Jay and other documents relating to the treaty, and on March 7 the debate began, lasting till April 7. On March 7 Madison moved to amend the resolutions by adding: "Except so much of said papers as, in his judgment, it may not be consistent with the interest of the United States, at this time, to disclose" (*Annals 4th Cong., 1st Sess.*, 438), but this was rejected. March 24 the call for the papers was agreed to, and on March 30 Washington's refusal to send them was received. On April 6 Thomas

solemnity, it must be in a case like the present, where two of the constituted authorities interpreted differently the extent of their respective powers.

It was a consolation, however, of which every member would be sensible, to reflect on the happy difference of our situation, on such occurrences, from that of Governments in which the constituent members possessed independent and hereditary prerogatives. In such Governments, the parties having a personal interest in their public stations, and not being amenable to the national will, disputes concerning the

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Blount of North Carolina introduced the following, which Madison had written:

"*Resolved*, That, it being declared by the second section of the second article of the Constitution, that 'the President shall have power, by and with the advice of the Senate, to make Treaties, provided two-thirds of the Senate present concur,' the House of Representatives do not claim any agency in making Treaties; but, that when a Treaty stipulates regulations on any of the subjects submitted by the Constitution to the power of Congress, it must depend for its execution, as to such stipulations, on a law or laws to be passed by Congress. And it is the Constitutional right and duty of the House of Representatives, in all such cases, to deliberate on the expediency or inexpediency of carrying such Treaty into effect, and to determine and act thereon, as, in their judgment, may be most conducive to the public good.

"*Resolved*, That it is not necessary to the propriety of any application from this House to the Executive, for information desired by them, and which may relate to any Constitutional functions of the House, that the purpose for which such information may be wanted, or to which the same may be applied, should be stated in the application." —*Annals*, 771.

April 7 Madison's resolutions were agreed to by a vote of 57 to 35. On April 29, in Committee of the Whole, by the casting vote of the chairman, Muhlenberg, it was resolved to carry the treaty into effect, and the next day this action was confirmed by a vote of 51 to 48. Madison's party had suffered defeat and its ranks were broken.

TO THOMAS JEFFERSON.

PHILAD^{A}, April 4, 1796.

. . . The Newspapers will inform you that the call for the Treaty papers was carried by 62 agst 37. You will find the answer of

limits of their respective authorities might be productive of the most fatal consequences. With us, on the contrary, although disputes of that kind are always to be regretted, there were three most precious resources against the evil tendency of them. In the first place, the responsibility which every department feels to the public will, under the forms of the Constitution, may be expected to prevent the excesses incident to conflicts between rival and irresponsible authorities. In the next place, if the difference cannot be adjusted by friendly conference and mutual concession, the sense of the constituent body, brought into the Government through the ordinary elective channels, may supply a remedy. And

the President herewith inclosed. The absolute refusal was as unexpected as the tone & tenor of the message are improper & indelicate. If you do not at once perceive the drift of the appeal to the Gen[l] Convention & its journal, recollect one of Camillus' last numbers, & read the latter part of Murray's speech. There is little doubt in my mind that the message came from N. Y., when it was seen that an experiment was to be made, at the hazard of the P., to save the faction ag[st] the Rep[s] of the people. The effect of this reprehensible measure on the majority is not likely to correspond with the calculation of its authors. I think there will be sufficient firmness to face it with resolutions declaring the Const[l] powers of the House as to Treaties, and that in applying for papers, they are not obliged to state their reasons to the Executive. In order to preserve this firmness however, it is necessary to avoid as much as possible an overt rencontre with the Executive. The day after the message was rec[d], the bill guarantying the loan for the federal City, was carried thro' the H. of Rep[s] by a swimming majority. . . .

According to my memory & that of others, the Journal of the Convention was, by a vote deposited with the P., to be kept sacred until called for by some competent authority. How can this be reconciled with the use he has made of it? Examine my notes if you please at the close of the business, & let me know what is said on the subject.— You will perceive that the quotation is nothing to the purpose. Most of the majority w[d] decide as the Convention did because they think there may be some Treaties, as a Mere Treaty of peace that would not require the Legislative power—a ratification by law also expressed a different idea from that entertained by the House of its agency.— *Mad. MSS.*

if this resource should fail, there remains, in the third and last place, that provident article in the Constitution itself, by which an avenue is always open to the sovereignty of the people, for explanations or amendments, as they might be found indispensable.

If, in the present instance, it was to be particularly regretted that the existing difference of opinion had arisen, every motive to the regret was a motive to calmness, to candor, and the most respectful delicacy towards the other constituted authority. On the other hand, the duty which the House of Representatives must feel to themselves and to their constituents required that they should examine the subject with accuracy, as well as with candor, and decide on it with firmness, as well as with moderation.

In this temper, he should proceed to make some observations on the Message before the Committee, and on the reasons contained in it.

The Message related to two points: First. The application made for the papers. Secondly. The Constitutional rights of Congress, and of the House of Representatives, on the subject of Treaties.

On the first point, he observed, that the right of the House to apply for any information they might want, had been admitted by a number in the minority, who had opposed the exercise of the right in this particular case. He thought it clear that the House must have a right, in all cases, to ask for information which might assist their deliberations on the subjects submitted to them by the Constitution; being responsible, nevertheless, for the propriety of the measure. He was as ready to admit that the Executive had a right, under a due responsibility, also, to withhold information, when of a nature that did not permit a disclosure of it at the time. And if the refusal of the President had been founded simply on a representation, that the state of the business within his department, and the contents of the papers asked for, required it, although he might have regretted the refusal, he

should have been little disposed to criticise it. But the Message had contested what appeared to him a clear and important right of the House; and stated reasons for refusing the papers, which, with all the respect he could feel for the Executive, he could not regard as satisfactory or proper.

One of the reasons was, that it did not occur to the Executive that the papers could be relative to any purpose under the cognizance, and in the contemplation of the House. The other was, that the purpose for which they were wanted was not expressed in the resolution of the House.

With respect to the first, it implied that the Executive was not only to judge of the proper objects and functions of the Executive department, but, also, of the objects and functions of the House. He was not only to decide how far the Executive trust would permit a disclosure of information, but how far the Legislative trust could derive advantage from it. It belonged, he said, to each department to judge for itself. If the Executive conceived that, in relation to his own department, papers could not be safely communicated, he might, on that ground, refuse them, because he was the competent though a responsible judge within his own department. If the papers could be communicated without injury to the objects of his department, he ought not to refuse them as irrelative to the objects of the House of Representatives; because the House was, in such cases, the only proper judge of its own objects.

The other reason of refusal was, that the use which the House meant to make of the papers was not expressed in the resolution.

As far as he could recollect, no precedent could be found in the records of the House, or elsewhere, in which the particular object in calling for information was expressed in the call. It was not only contrary to right to require this, but it would often be improper in the House to express the object. In the particular case of an impeachment referred to in the Message, it might be evidently improper to state that to be the object

of information which might possibly lead to it, because it would involve the preposterous idea of first determining to impeach, and then inquiring whether an impeachment ought to take place. Even the holding out an impeachment as a contemplated or contingent result of the information called for, might be extremely disagreeable in practice, as it might inflict a temporary pain on an individual, whom an investigation of facts might prove to be innocent and perhaps meritorious.

From this view of the subject he could not forbear wishing that, if the papers were to be refused, other reasons had been assigned for it. He thought the resolutions offered by the gentleman from North Carolina, one of which related to this subject, ought to stand on the Journal along with the Message which had been entered there. Both the resolutions were penned with moderation and propriety. They went no farther than to assert the rights of the House; they courted no reply; and it ought not to be supposed they could give any offence.

The second object to which the measure related, was the Constitutional power of the House on the subject of Treaties.

Here, again, he hoped it may be allowable to wish that it had not been deemed necessary to take up, in so solemn a manner, a great Constitutional question, which was not contained in the resolution presented by the House, which had been incidental only to the discussion of that resolution, and which could only have been brought into view through the unauthentic medium of the newspapers. This, however, would well account for the misconception which had taken place in the doctrine maintained by the majority in the late question. It had been understood by the Executive, that the House asserted its assent to be necessary to the validity of Treaties. This was not the doctrine maintained by them. It was, he believed, fairly laid down in the resolution proposed, which limited the power of the House over Treaties,

to cases where Treaties embraced Legislative subjects, submitted by the Constitution to the power of the House.

Mr. M. did not mean to go into the general merits of this question, as discussed when the former resolution was before the Committee. The Message did not request it, having drawn none of its reasoning from the text of the Constitution. It had merely affirmed that the power of making Treaties is exclusively vested by the Constitution in the President, by and with the advice and consent of the Senate. Nothing more was necessary on this point than to observe, that the Constitution had as expressly and exclusively vested in Congress the power of making laws, as it had vested in the President and Senate the power of making Treaties.

He proceeded to review the several topics on which the Message relied. First. The intention of the body which framed the Constitution. Secondly. The opinions of the State Conventions who adopted it. Thirdly. The peculiar rights and interests of the smaller States. Fourthly. The manner in which the Constitution had been understood by the Executive and the foreign nations, with which Treaties had been formed. Fifthly. The acquiescence and acts of the House on former occasions.

1. When the members on the floor, who were members of the General Convention, particularly a member from Georgia and himself, were called on in a former debate for the sense of that body on the Constitutional question, it was a matter of some surprise, which was much increased by the peculiar stress laid on the information expected. He acknowledged his surprise, also, at seeing the Message of the Executive appealing to the same proceedings in the General Convention, as a clue to the meaning of the Constitution.

It had been his purpose, during the late debate, to make some observations on what had fallen from the gentlemen from Connecticut and Maryland, if the sudden termination of the debate had not cut him off from the opportunity. He should have reminded them that this was the ninth year since

the convention executed their trust, and that he had not a single note in this place to assist his memory. He should have remarked, that neither himself nor the other members who had belonged to the Federal Convention, could be under any particular obligation to rise in answer to a few gentlemen, with information, not merely of their own ideas at that period, but of the intention of the whole body; many members of which, too, had probably never entered into the discussions of the subject. He might have further remarked, that there would not be much delicacy in the undertaking, as it appeared that a sense had been put on the Constitution by some who were members of the Convention, different from that which must have been entertained by others, who had concurred in ratifying the Treaty.

After taking notice of the doctrine of Judge Wilson, who was a member of the Federal Convention, as quoted by Mr. Gallatin from the Pennsylvania debates, he proceeded to mention that three gentlemen, who had been members of the Convention, were parties to the proceedings in Charleston, South Carolina, which, among other objections to the Treaty, represented it as violating the Constitution. That the very respectable citizen who presided at the meeting in Wilmington, whose resolutions made a similar complaint, had also been a distinguished member of the body that formed the Constitution.

It would have been proper for him, also, to have recollected what had, on a former occasion, happened to himself during a debate in the House of Representatives. When the bill for establishing a National Bank was under consideration, he had opposed it, as not warranted by the Constitution, and incidentally remarked, that his impression might be stronger, as he remembered that, in the Convention, a motion was made and negatived, for giving Congress a power to grant charters of incorporation. This slight reference to the Convention, he said, was animadverted on by several, in the course of the debate, and particularly by a gentleman from

Massachusetts, who had himself been a member of the Convention, and whose remarks were not unworthy the attention of the Committee. Here Mr. M. read a paragraph from Mr. Gerry's speech, from the Gazette of the United States, page 814, protesting, in strong terms, against arguments drawn from that source.

Mr. M. said, he did not believe a single instance could be cited in which the sense of the Convention had been required or admitted as material in any Constitutional question. In the case of the Bank, the Committee had seen how a glance at that authority had been treated in this House. When the question on the suability of the States was depending in the Supreme Court, he asked, whether it had ever been understood that the members of the Bench, who had been members of the Convention, were called on for the meaning of the Convention on that very important point, although no Constitutional question would be presumed more susceptible of elucidation from that source.

He then adverted to that part of the Message which contained an extract from the Journal of the Convention, showing that a proposition "that no Treaty should be binding on the United States, which was not ratified by law," was explicitly rejected. He allowed this to be much more precise than any evidence drawn from the debates in the Convention, or resting on the memory of individuals. But, admitting the case to be as stated, of which he had no doubt, although he had no recollection of it, and admitting the record of the Convention to be the oracle that ought to decide the true meaning of the Constitution, what did this abstract vote amount to? Did it condemn the doctrine of the majority? So far from it, that, as he understood their doctrine, they must have voted as the Convention did; for they do not contend that no Treaty shall be operative without a law to sanction it; on the contrary, they admit that some Treaties will operate without this sanction; and that it is no further applicable in any case than where Legislative objects are

embraced by Treaties. The term "ratify" also deserved some attention; for, although of loose signification in general, it had a technical meaning different from the agency claimed by the House on the subject of Treaties.

But, after all, whatever veneration might be entertained for the body of men who formed our Constitution, the sense of that body could never be regarded as the oracular guide in expounding the Constitution. As the instrument came from them it was nothing more than the draft of a plan, nothing but a dead letter, until life and validity were breathed into it by the voice of the people, speaking through the several State Conventions. If we were to look, therefore, for the meaning of the instrument beyond the face of the instrument, we must look for it, not in the General Convention, which proposed, but in the State Conventions, which accepted and ratified the Constitution. To these also the Message had referred, and it would be proper to follow it.

2. The debates of the Conventions in three States (Pennsylvania, Virginia, and North Carolina) had been before introduced into the discussion of this subject, and were believed the only publications of the sort which contained any lights with respect to it. He would not fatigue the Committee with a repetition of the passages then read to them. He would only appeal to the Committee to decide whether it did not appear, from a candid and collected view of the debates in those Conventions, and particularly in that of Virginia, that the Treaty-making power was a limited power; and that the powers in our Constitution, on this subject bore an analogy to the powers on the same subject in the Government of Great Britain. He wished, as little as any member could to extend the analogies between the two Governments; but it was clear that the constituent parts of two Governments might be perfectly heterogeneous, and yet the powers be similar.

At once to illustrate his meaning, and give a brief reply to some arguments on the other side, which had heretofore been urged with ingenuity and learning, he would mention, as an

example, the power of pardoning offences. This power was vested in the President; it was a prerogative also of the British King. And, in order to ascertain the extent of the technical term "pardon," in our Constitution, it would not be irregular to search into the meaning and exercise of the power in Great Britain. Yet, where is the general analogy between an hereditary Sovereign, not accountable for his conduct, and a Magistrate like the President of the United States, elected for four years, with limited powers, and liable to impeachment for the abuse of them?

In referring to the debates of the State Conventions as published, he wished not to be understood as putting entire confidence in the accuracy of them. Even those of Virginia, which had been probably taken down by the most skilful hand, (whose merit he wished by no means to disparage,) contained internal evidence in abundance of chasms and misconceptions of what was said.

The amendments proposed by the several Conventions were better authority, and would be found, on a general view, to favor the sense of the Constitution which had prevailed in this House. But even here it would not be reasonable to expect a perfect precision and system in all their votes and proceedings. The agitations of the public mind on that occasion, with the hurry and compromise which generally prevailed in settling the amendments to be proposed, would at once explain and apologize for the several apparent inconsistencies which might be discovered.

He would not undertake to say that the particular amendment referred to in the Message, by which two states require that "no Commercial Treaty should be ratified without the consent of two-thirds of the whole number of Senators, and that no Territorial rights, &c. should be ceded without the consent of three-fourths of the members of both Houses," was digested with an accurate attention to the whole subject. On the other hand, it was no proof that those particular Conventions, in annexing these guards to the Treaty power,

understood it as different from that espoused by the majority of the House. They might consider Congress as having the power contended for over Treaties stipulating on Legislative subjects, and still very consistently wish for the amendment they proposed. They might not consider the Territorial-rights and other objects for which they required the concurrence of three-fourths of the members of both Houses as coming within any of the enumerated powers of Congress, and, therefore, as not protected by that control over Treaties. And although they might be sensible that Commercial Treaties were under that control, yet, as they would always come before Congress with great weight after they had passed through the regular forms and sanctions of the Treaty department, it might be deemed of real importance that the authority should be better guarded which was to give that weight to them.

He asked, whether it might not happen, even in the progress of a Treaty through the Treaty department, that each succeeding sanction might be given, more on account of preceding sanctions than of any positive approbation? And no one could doubt, therefore, that a Treaty which had received all these sanctions would be controlled with great reluctance by the Legislature, and, consequently, that it might be desirable to strengthen the barriers against making improper Treaties, rather than trust too much to the Legislative control over carrying them into effect.

But, said Mr. M., it will be proper to attend to other amendments proposed by the ratifying Conventions, which may throw light on their opinions and intentions on the subject in question. He then read from the Declaration of Rights proposed by Virginia to be prefixed to the Constitution, the seventh article, which is as follows:

"That all power of suspending laws, or the execution of laws, by any authority, without the consent of the Representatives of the people in the Legislature, is injurious to their rights, and ought not to be exercised."

The Convention of North Carolina, as he showed, had laid down the same principle in the same words. And it was to be observed that, in both Conventions, the article was under the head of a Declaration of Rights, "asserting and securing from encroachment the essential and inalienable rights of the people," according to the language of the Virginia Convention; and "asserting and securing from encroachment the great principles of civil and religious liberty, and the inalienable rights of the people," as expressed by the Convention of North Carolina. It must follow that these two Conventions considered it as a fundamental, inviolable, and universal principle in a free Government, that no power could supersede a law without the consent of the Representatives of the people in the Legislature.

In the Maryland Convention also, it was among the amendments proposed, though he believed not decided on, "that no power of suspending laws, or the execution of laws, unless derived from the Legislature, ought to be exercised or allowed."

The Convention of North Carolina had further explained themselves on this point, by their twenty-third amendment proposed to the Constitution, in the following words: "That no Treaties which shall be directly opposed to the existing laws of the United States in Congress assembled, shall be valid until such laws shall be repealed or made conformable to such Treaty; nor shall any Treaty be valid which is contradictory to the Constitution of the United States."

The latter part of the amendment was an evidence that the amendment was intended to ascertain rather than to alter the meaning of the Constitution; as it could not be supposed to have been the real intention of the Constitution that a Treaty contrary to it should be valid.

He proceeded to read the following amendments accompanying the ratification of State Conventions:

The New York Convention had proposed "that no standing army or regular troops shall be raised or kept up in time of

peace without the consent of two-thirds of the Senators and Representatives in each House."

"That no money be borrowed on the credit of the United States, without the assent of two-thirds of the Senators and Representatives in each House."

The New Hampshire Convention had proposed "that no standing army shall be kept up in time of peace, unless with the consent of three-quarters of the members of each branch of Congress." In the Maryland Convention a proposition was made in the same words.

The Virginia Convention had proposed "that no navigation law, or law regulating commerce, shall be passed without the consent of two-thirds of the members present in both Houses."

"That no standing army or regular troops shall be raised or kept up in time of peace, without the consent of two-thirds of the members present in both Houses."

"That no soldier shall be enlisted for any longer term than four years, except in time of war, and then for no longer term than the continuance of the war."

The Convention of North Carolina had proposed the same three amendments in the same words.

On a review of these proceedings, may not, said he, the question be fairly asked, whether it ought to be supposed that the several Conventions who showed so much jealousy with respect to the powers of commerce, of the sword, and of the purse, as to require, for the exercise of them, in some cases two-thirds, in others three-fourths of both branches of the Legislature, could have understood that, by the Treaty clauses in the Constitution, they had given to the President and Senate, without any control whatever from the House of Representatives, an absolute and unlimited power over all those great objects?

3. It was with great reluctance, he said, that he should touch on the third topic—the alleged interest of the smaller States in the present question. He was the more unwilling to enter into this delicate part of the discussion, as he hap-

pened to be from a State which was in one of the extremes in point of size. He should limit himself, therefore, to two observations. The first was, that if the spirit of amity and mutual concession from which the Constitution resulted was to be consulted on expounding it, that construction ought to be favored which would preserve the mutual control between the Senate and House of Representatives, rather than that which gave powers to the Senate not controllable by, and paramount over those of the House of Representatives, whilst the House of Representatives could in no instance exercise their powers without the participation and control of the Senate. The second observation was, that, whatever jealousy might unhappily have prevailed between the smaller and larger States, as they had most weight in one or the other branch of Government, it was a fact, for which he appealed to the Journals of the old Congress, from its birth to its dissolution, and to those of the Congress under the present Government, that in no instance would it appear, from the yeas and nays, that a question had been decided by a division of the votes according to the size of the States. He considered this truth as affording the most pleasing and consoling reflection, and as one that ought to have the most conciliating and happy influence on the temper of all the States.

4. A fourth argument in the Message was drawn from the manner by which the Treaty power had been understood by both parties in the negotiations with foreign Powers. "In all the Treaties made, *we* have declared and *they* have believed," &c. By *we*, he remarked, was to be understood the Executive alone, who had made the declaration, and in no respect the House of Representatives. It was certainly to be regretted, as had often been expressed, that different branches of the Government should disagree in the construction of their powers; but when this could not be avoided, each branch must judge for itself; and the judgment of the Executive could in this case be no more an authority overruling the judgment of the House than the judgment of the

House could be an authority overruling that of the Executive. It was also to be regretted that any foreign nation should at any time proceed under a misconception of the meaning of our Constitution. But no principle was better established in the Laws of Nations, as well as in common reason, than that one nation is not to be the interpreter of the Constitution of another. Each nation must adjust the forms and operations of its own Government, and all others are bound to understand them accordingly. It had before been remarked, and it would be proper to repeat it here, that of all nations Great Britain would be the least likely to object to this principle, because the construction given to our Government was particularly exemplified in her own.

5. In the fifth and last place, he had to take notice of the suggestion, that every House of Representatives had concurred in the construction of the Treaty power, now maintained by the Executive; from which it followed that the House could not now consistently act under a different construction. On this point, it might be sufficient to remark, that this was the first instance in which a foreign Treaty had been made since the establishment of the Constitution; and that this was the first time the Treaty-making power had come under formal and accurate discussion. Precedents, therefore, would readily be perceived to lose much of their weight. But whether the precedents found in the proceedings preparatory to the Algerine Treaty, or in the provisions relative to the Indian Treaties, were inconsistent with the right which had been contended for in behalf of the House, he should leave to be decided by the Committee. A view of these precedents had been pretty fully presented to them by a gentleman from New York [Mr. Livingston] with all the observations which the subject seemed to require.

On the whole, it appeared that the rights of the House on the two great Constitutional points had been denied by a high authority in the Message before the Committee. This Message was entered on the Journals of the House. If

nothing was entered in opposition thereto, it would be inferred that the reasons in the Message had changed the opinion of the House, and that their claims on those great points were relinquished. It was proper, therefore, that the questions, brought fairly before the Committee in the propositions of the gentleman [Mr. Blount] from North Carolina, should be examined and formally decided. If the reasoning of the Message should be deemed satisfactory, it would be the duty of this branch of the Government to reject the propositions, and thus accede to the doctrines asserted by the Executive. If, on the other hand, this reasoning should not be satisfactory, it would be equally the duty of the House, in some such firm, but very decent terms, as are proposed, to enter their opinions on record. In either way, the meaning of the Constitution would be established, as far as depends on the vote of the House of Representatives.

Mr. M. said, on a subject of such extent and importance, he should not attempt to go through all the observations that might be applicable to it. A general view of the subject was all that he meant at present. His omissions would be more than supplied by others who might enter into the discussion.

The proposition immediately before the Committee was, that the Treaty with Great Britain ought to be carried into effect by such provisions as depended on the House of Representatives. This was the point immediately in question. But it would be proper in examining it to keep in view also the proposition of the gentleman from Pennsylvania [Mr. Maclay] which had been referred to the Committee, and which would be taken up of course, if the immediate question should be decided in the negative.

If the proposition for carrying the Treaty into effect be agreed to, it must be from one of three considerations: either that the Legislature is bound by a Constitutional necessity to pass the requisite laws without examining the merits of the Treaty, or that, on such examination, the Treaty is deemed in itself a good one, or that there are good extraneous reasons

for putting it into force, although it be in itself a good one, or that there are good extraneous reasons for putting it into force, although it be in itself a bad Treaty.

The first consideration being excluded by the decision of the House, that they have a right to judge of the expediency or inexpediency of passing laws relative to Treaties; the question first to be examined must relate to the merits of the Treaty. He then proceeded to consider the Treaty under three aspects: first, as it related to the execution of the Treaty of Peace in 1783; secondly, as it determines the several points in the Law of Nations; thirdly, as it respects the commerce between the two nations.

First. He would not inquire on which side the blame lay, of having first violated the Treaty of 1783, or of having most contributed to delay its execution, although he did not shrink from the task under any apprehension that the result could be disadvantageous to this country. The Treaty itself had waived this inquiry, and professed to adjust all controversies on this subject, without regard to the mutual complaints or pretensions of the parties. It was, therefore, justly and naturally to be expected, that the arrangements for carrying that Treaty into effect would have been founded in the most exact and scrupulous reciprocity. Was this the case? He was sorry that, on the contrary, the arrangements were founded on the grossest violation of that principle.

There were two articles which had not been executed by Great Britain; that which related to the negroes and other property carried away, and that which required a surrender of the posts. The article unexecuted by the United States was, that which required payment of all *bona fide* debts, according to the Treaty now in question: this article is now to be carried into the most complete effect by the United States, and damages to the last fraction are to be paid for the delay. Is there a reciprocal stipulation by Great Britain with respect to the articles unexecuted by her? Nothing like it. She is wholly absolved from the obligation to fulfil one of the

articles, viz.: that relating to the negroes, &c., and she is to make no compensation whatever for delaying to fulfil the other, viz.: the surrender of the posts.

It had been urged in apology for those very unequal stipulations, that the injury resulting from a forbearance to surrender the posts, was not susceptible of any precise liquidation into pecuniary damages. However plausible this might appear, it was by no means satisfactory. Commissioners, such as were appointed, with full discretion for other purposes, might have been charged with this subject, and if they could not have done exact justice, might have mitigated the injustice of doing nothing.

Apologies had been attempted also for the very extraordinary abandonment of the compensation due for the negroes, &c. It was said to be at least doubtful whether this claim was authorized by the seventh article of the Treaty of Peace, and that Great Britain had uniformly denied the meaning put by the United States on that article. In reply he made two remarks. First, that it was not true that Great Britain had uniformly denied the American construction of that article; on the contrary, he believed, it could be proved, that till of late, Great Britain had uniformly admitted this construction, and had rejected the claim on no other ground than the alleged violation of the fourth article on the part of the United States.

But had it been true that Great Britain had uniformly asserted a different construction of the article, and refused to accede to ours, what ought to have been done? Ought we to have at once acceded to hers? By no means. Each party had an equal right to interpret the compact; and if they could not agree, they ought to have done in this what they did in other cases where they could not agree; that is, have referred the settlement of the meaning of the compact to an arbitration. To give up the claim altogether, was to admit, either that Great Britain had a better right than the United States to explain the controverted point, or that the United States

had done something which in justice called for a sacrifice of their equal right.

It was evident, he thought, from this view of the subject, that the arrangements with respect to the Treaty of Peace were frequently wanting both in justice and reciprocity.

It would seem, from the face of the Treaty, and the order of the articles, that the compensation for the spoliations on our trade had been combined with the execution of the Treaty of Peace; and might therefore have been viewed as a substitute for the compensation for the negroes, &c. If this was the meaning of the instrument, it could not be the less obnoxious to reasonable and fair judges. No man was more thoroughly convinced than himself of the perfect justice on which the claims of the merchants against Great Britain were founded, nor any one more desirous to see them fully indemnified. But compensation to them could never be a just substitute for the compensation due to others. It was impossible that any claims could be better founded than those of the sufferers under the seventh article of the Treaty of Peace; because they were supported by positive and acknowledged stipulation, as well as by equity and right. Just and strong as the claims of the merchants might be, and certainly were, the United States could not be obliged to take more care of them than of the claims equally just and strong of other citizens; much less to sacrifice to them the claims for property wrongfully carried off at the close of the war, and obtaining stipulations in favor of the mercantile claims, the mercantile claims had been relinquished, and the other claims provided for; he asked whether the complaints of the merchants would not have been as universal and as loud as they would have been just?

Besides the omissions in favor of Great Britain, already pointed out with respect to the execution of the Treaty of Peace, he observed, that conditions were annexed to the partial execution of it in the surrender of the Western posts, which increased the general inequality of this part

of the Treaty, and essentially affected the value of those objects.

The value of the posts to the United States was to be estimated by their influence—1st, on the Indian trade; 2d, on the conduct and temper of the Indians towards the United States.

Their influence on the Indian trade depended principally on the exclusive command they gave to the several carrying places connected with the posts. These places were understood to be of such importance in this respect, that those who possessed them exclusively would have a monopoly, or nearly a monopoly, of the lucrative intercourse with a great part of the savage nations. Great Britain having hitherto possessed these places exclusively, has possessed this advantage. It was expected that the exclusive transfer of them would transfer the advantage to the United States. By the Treaty now concluded, the carrying places are to be enjoyed in common, and it will be determined by the respective advantages under which British and American traders will engage in the trade, which of them is to share most in it. In this point of view he thought the regulation highly impolitic and injurious. He would say little of the advantage which the British would have in their superior capital: that must be encountered in all our commercial rivalships. But there was another consideration which ought to have great weight on this subject. The goods imported for the Indian trade through Canada pay no duties. Those imported through the United States for that trade, will have paid duties from seven to ten per cent., and every one must see that a drawback is impracticable, or would be attended with an expense which the business would not bear. So far, then, as the importance of the posts is to be considered in a commercial view, they are, in a very great measure, stripped of it by the condition annexed to the surrender of them. Instead of a monopoly in our favor, the carrying places are made common under circumstances which may leave a monopoly in the hands of Great

Britain. And this is done, too, by an article which is to last forever.

Second. The influence of the posts on the general conduct of the Indians, is well known to depend chiefly on their influence on the Indian trade. In proportion, therefore, as the condition annexed to the surrender of posts affects the one, it must affect the other. If the British should continue to enjoy the Indian trade, they would continue to influence the Indian conduct; if not in the same degree as heretofore, at least in so great a degree as to condemn the article in question.

He mentioned the permission to aliens to hold land in perpetuity as a very extraordinary feature in this part of the Treaty. He would not inquire how far this might be authorized by Constitutional principles. But he would continue to say, that no example of such a stipulation was to be found in any Treaty that ever was made, either where territory was ceded, or where it was acknowledged by one nation to another. Although it was common and right in such cases to make regulation in favor of the property of the inhabitants, yet he believed, that in every case that had ever happened, the owners of landed property were universally required to swear allegiance to the new sovereign, or to dispose of their landed property within a reasonable time.

He took notice also of the inequality of the stipulation which opened all the ports of the United States, as the condition of having those of an unimportant province of Great Britain opened in return.

With respect to the Mississippi he could not but consider the clause relating to it as being singularly reprehensible. Happily the adjustment of our claims with Spain had been brought about before any evil operation of the clause had been experienced. But the tendency of it, he thought, could not be doubted. It was the more remarkable, that this extension of the privileges of Great Britain on the Mississippi beyond those in the Treaty of Peace, should have been admitted into the new Treaty, because it is supposed by the

Treaty itself, that Great Britain may be deprived, by her real boundary, of all pretensions to a share in the banks and waters of the Mississippi.

With respect to the great points in the Law of Nations, comprehended in the stipulations of the Treaty, the same want of real reciprocity, and the same sacrifice of the interests of the United States, were conspicuous.

It was well known to have been a great and favorite object with the United States, "that free ships make free goods." They have established this principle in all their other Treaties. They have witnessed with anxiety the general effort, and the successful advances towards incorporating this principle into the Law of Nations; a principle friendly to all neutral nations, and particularly interesting to the United States. He knew that at a former period it had been conceded on the part of the United States that the Law of Nations stood as the present Treaty regulates it. But it did not follow that more than acquiescence in that doctrine was proper. There was an evident distinction between silently acquiescing in it, and giving it the support of a formal and positive stipulation. The former was all that could have been required, and the latter was more than ought to have been unnecessarily yielded.

In the enumeration of contraband articles, the Treaty was liable to similar observations. The circumstances and interests of the United States had given way to the particular views of the other party. The example in all other Treaties has been disregarded. Hemp, tar, pitch, turpentine, &c., important staples of this country, are, without even a pretext of reciprocity, subjected to confiscation. No nation which produced these articles had, he believed, Treaties at present making the same sacrifice, except Denmark, who, in the year 1780, had been induced, he knew not by what means, into an explanation of the Treaty of 1670, by which these articles are declared to be contraband. He observed, that this supplementary and explanatory agreement between Great Britain and Denmark appeared to have been the model selected for

the contraband list in the Treaty now in question. The enumeration in the latter was transcribed, word for word, from the former, with a single exception, which might be thought remarkable. The article of *horses*, which was included in the original, was dropped in the copy. In this particular the article had departed from *Vattel* also, although in general the Treaty seemed to have availed itself wherever it readily could of his authority.

But, what was far more remarkable, the copy had proceeded just as far as answered the purposes of Great Britain, and stopped at the very point where the original would have answered the just and essential purposes of the United States. After enumerating the articles to be deemed contraband, the Danish article goes on in the words following, viz: "But it is expressly declared that among contraband merchandises shall not be comprehended fish and meats, whether fresh or salted, wheat, flour, corn, or other grain, beans, oil, wine, and generally whatever serves for the nourishment and support of life, all of which may at all times be sold and transported like any other merchandises, even to places held by an enemy of the two Crowns, provided they be not besieged or blockaded."

This view of the subject naturally led him to take notice of the clause in the British Treaty relating to provisions; which, to say the least, wore an ambiguous countenance that was extremely disagreeable, or which rather seemed to carry a necessary implication that provisions, though not bound to besieged or blockaded places, might, according to the existing Law of Nations, be regarded as contraband. According to the genuine Law of Nations, no articles which are not expressly and generally contraband, are so, except in the single case of their going to a besieged place; yet it is admitted in the Treaty that there are other cases when provisions may be contraband, whence the implication results, that one of the cases might be that which had been assumed and put in force by Great Britain in relation to the United States. The

little cases which might be devised as appurtenant to the law which condemns what is bound to blockaded places, cannot satisfy the import of the stipulation, because such cases cannot be presumed to have been in the contemplation of the parties. And if the particular case of provisions bound to a country at war, although not to a besieged place, was not meant to be one of the cases of contraband, according to the existing Law of Nations, how necessary was it to have said so; and how easy and natural would that course have been, with the Danish example on the subject before their eyes.

On the supposition that provisions in our own vessels bound to countries at war with Great Britain, can be now seized by her for her own use, on the condition stipulated, this feature of the Treaty presents itself in a very serious light, indeed, especially if the doctrine be resorted to as laid down by the Executive, in the letter of the then Secretary of State [Mr. Jefferson] to Mr. Pinckney, on the 7th September, 1793. This letter is a comment on the British instructions of June 8, 1793, for seizing neutral provisions. After stating the measure as a flagrant breach of the Law of Nations, and as ruinous to our commerce and agriculture, it has the following paragraph: "This act, too, tends directly to draw us from that state of peace in which we are wishing to remain. It is an essential character of neutrality to furnish no aids not stipulated by Treaty," that is, said Mr. M., by a Treaty made before the war, "to one party which we are not equally ready to furnish to the other. If we permit corn to be sent to Great Britain and her friends, we are equally bound to permit it to France. To restrain it, would be a partiality which must lead to war; and between restraining it ourselves and permitting her enemies to restrain it unrightfully is no difference. She would consider this as a mere pretext, of which she would not be the dupe; and on what honorable ground could we otherwise explain it? Thus we should see ourselves plunged, by this unauthorized act of Great Britain, into a war with

which we meddle not, and which we wish to avoid, if justice to all parties and from all parties will enable us to avoid it." He entreated the Committee to bestow on this interesting Executive document all the attention which it demanded.

The article prohibiting sequestration was next considered by Mr. M. He said he should probably be among the last who would be disposed to resort to such an expedient for redress. But he could not approve of a perpetual and irrecoverable abandonment of a defensive weapon, the existence of which might render the use of it unnecessary. The situation of this country in relation to Great Britain was a peculiar one. As we had not fleets and armies to command a respect for our rights, we ought to keep in our hands all such means as our situation gave us. This article was another instance in which no regard was paid to reciprocity. British subjects, it was well known, had and were likely to have in this country a great deal of the property of the king made sacred. American citizens, it was as well known, had little, and were likely to have little of the kind in Great Britain. If a real reciprocity had been intended, why were not other kinds of private property, as vessels and their cargoes, equally protected against violation? These, even within the jurisdiction of Great Britain, are left open to seizure and sequestration, if Great Britain finds it expedient. And why was not property on the high seas under the protection of the Law of Nations, which is said to be a part of the law of the land, made secure by a like stipulation? This would have given a face of equality and reciprocity to the bargain. But nothing of the sort makes a part of it; where Great Britain had a particular interest at stake, the Treaty watchfully provides for it; when the United States have an equal interest at stake and equally entitled to protection, it is abandoned to all the dangers which it has experienced.

After taking this brief notice of the positive evils in this part of the Treaty, he might, he said, add the various omissions which were chargeable on it. But as he should not

pretend to exhaust the subject, he would mention one only: the not providing for the respect due to the exhibition of sea papers. He could not but regard this omission as truly extraordinary, when he observed that in almost every modern Treaty, and particularly all our other Treaties, an article on this subject was regularly inserted. Indeed, it had become almost an article of course in the Treaties of the present century.

Thirdly. The commercial articles of the Treaty presented the third aspect under which he was to consider it. In the free intercourse stipulated between the United States and Great Britain, it could not be pretended that any advantage was gained by the former. A Treaty was surely not necessary to induce Great Britain to receive our raw materials and to sell us her manufactures. On the other hand, consider what was given up by the United States.

When the Government came into operation, it is well known that the American tonnage employed in the British trade bore the most inconsiderable proportion to the British tonnage. There being nothing on our side to counteract the influence of capital and other circumstances on the British side, that disproportion was the natural state of things. As some balance to the British advantages, and particularly that of her capital, our laws had made several regulations in favor of our shipping, among which was the important encouragement resulting from the difference of ten per cent. in the duties paid by American and foreign vessels. Under this encouragement the American tonnage has increased in a very respectable proportion to the British tonnage. Nor has Great Britain ever deemed it prudent to attempt any countervailing measures for her shipping, well knowing that we could easily keep up the differences by further measures on our side. But by the Treaty, she has reserved to herself the right to take such countervailing measures against our existing regulations; and we have surrendered our rights to pursue further defensive measures against the influence of her capital.

It is justly to be apprehended, therefore, that under such a restoration of the former state of things, the American tonnage will relapse to its former disproportion to the British tonnage.

When he turned his attention to the West India branch of the subject, there was still greater cause for wonder and dissatisfaction. As the Treaty now stood, Great Britain was left as free as she ever had been to continue the entire monopoly of the intercourse to British vessels. Recollecting, as he did, and as every member of the Committee must do, the whole history of this subject from the peace of 1783, through every subsequent stage of our Independence down to the mission of the late Envoy, it was impossible for him to express his astonishment that any Treaty of Commerce should have ever been acceded to which abandoned the very object for which such a Treaty was ever contemplated. He never could have believed that the time was so near when all the principles, claims, and calculations, which have heretofore prevailed among all classes of people, in every part of the Union, on this interesting point, were to be so completely renounced. A Treaty of Commerce with Great Britain, excluding a reciprocity for our vessels in the West India trade, is a phenomenon which had filled him with more surprise than he knew how to express.

He might be told, perhaps, 1st. That Great Britain granted to no other nation the privilege granted to the United States of trading at all with her West Indies; and, 2dly. That this was an important relaxation of the Colony system established among the nations of Europe.

To the first, it was enough to reply, that no other nation bore the same relation to the West Indies, as the United States were essential to those Islands; and the trade with them had been permitted purely on that account, and not as a beneficial privilege to the United States.

To the second, that it was not true that the Colony system required an exclusion of foreign vessels from the carrying

trade between the Colonies and foreign countries, on the contrary, the principle and practice of the Colony system were to prohibit, as much as would be convenient, all trade between the Colonies and foreign countries; but when such a trade was permitted at all as necessary for the Colonies, then to allow the vessels of such foreign countries a reciprocal right of being employed in the trade. Great Britain had accordingly restrained the trade of her Islands in this country as far as her interest in them would permit. But had she allowed our vessels their reciprocal right to carry on the trade so far as it was not restrained? No. Here she forced a monopoly in her own favor, contrary to justice, and contrary to the Colony system of every European nation having Colonies; which, without a single exception, never opens the trade between their Colonies and other countries without opening it equally to vessels on both sides. This is evidently nothing more than right and fair. A Colony is a part of an Empire. If a nation choose, they may prohibit all trade between a Colony and a foreign country, as they may between any other part of their dominions and a foreign country. But if they permit such a trade at all, it must be free to vessels on both sides as well in the case of Colonies as of any other parts of their dominions. Great Britain has the same right to prohibit foreign trade between London and the United States as between Jamaica and the United States; but if no such prohibition be made with respect to either, she is equally bound to allow foreign vessels a common right with her own in both. If Great Britain were to say that no trade whatever should be carried on between London and the United States, she would exercise a right which we could not complain of. If she were to say that no American vessel should be employed in the trade, it would produce just complaint, and justify a reciprocal regulation as to her vessels. The case of the trade from a port in the West Indies is precisely similar.

To place the omission of the Treaty to provide a reciprocity for our vessels in the West India trade in its true light, it

would be proper to attend to another part of the Treaty, which tied up the hands of this country against every effort for making it the interest of Great Britain to yield to our reasonable claims.

He then pointed to the clause which restrains the United States from imposing prohibitions or duties in any case on Britain which did not extend to all other nations; observing that the clause made it impossible to operate on the unreasonable policy of that nation, without suspending our commerce at the same time with all other nations whose regulations with respect to us might be ever so favorable and satisfactory.

The fifteenth article had another extraordinary feature, which must strike every observer. In other Treaties, putting the parties on the footing of the most favored nation, it was stipulated that where new favors were granted to a particular nation in return for favors received, the party claiming the new favor should pay the price of it. This was just and proper where the footing of the most favored nation is established at all. But this article gives to Great Britain the full benefit of all privileges that may be granted to any other nation, without requiring from her the same or equivalent privileges with those granted by such nation. Hence it would happen that if Spain, Portugal, or France, should open their Colonial ports to the United States in consideration of certain privileges in our trade, the same privileges would result gratis, and *ipso facto*, to Great Britain. He considered this stipulation as peculiarly impolitic, and that it could not fail, in the view of the Committee, to form a very solid and weighty objection to the Treaty.

He was not unaware of the stress that would be laid on the article relating to the East Indies. He should leave to others better acquainted than himself with this branch of the subject to explain it. He made two observations, however: one was, that judicious and well informed gentlemen, equally judicious and well informed with any who could be consulted, considered the article as offering not a shadow of advantage

to the United States. The other was, that no privilege was stipulated which had not been uniformly heretofore granted without stipulation; and as the grant could have proceeded from no motive but a pure regard to the British interest in that country, there was every reasonable security that the trade would continue open as it had been, under the influence of the same consideration.

Such being the character of the Treaty, with respect to the execution of the Treaty of Peace, the great principles of the Law of Nations, and the regulations of commerce, it never could be viewed as having any claim to be carried into effect on its own account.

Was there, then, any consideration extraneous to the Treaty that could furnish the requisite motives? On this subject, he observed that the House was wholly without information. And for himself he was ready to declare that he had neither seen, nor known, nor heard, of any circumstances in the general posture of things, or in the particular relation of this country to them, that could account for the unequal and injurious arrangements which we were now called upon for laws to execute.

But there was something farther to be taken into the account. The continuance of the spoliations on our trade, and the impressment of our seamen, whether, as stated in the motion of the gentleman from Pennsylvania [Mr. Maclay], to be understood as practical comments on the Treaty, or as infractions of it, could not but enforce on the minds of the Committee the most serious reflections. Here he referred again to the passage he had read in the letter from Mr. Jefferson to Mr. Pinckney, and asked, if, as there stated by the Executive, our neutrality and peace were to be exposed, by permitting practices of that kind, what might be thought of our giving effect, in the midst of such practices, to a Treaty from which a countenance might be derived by the nation for going on with them.

He was aware that the Executive, notwithstanding the

doctrine and policy laid down as above, had finally concurred in the Treaty under such circumstances. But he did not consider that as invalidating the reasoning drawn from the present state of things. He might, he said, be stepping on delicate ground, but he could not think it improper to remark, that it was a known fact that the Executive actually paused for some weeks after the concurrence of the Senate, before the Treaty received his signature; that it is fairly to be presumed that a renewal of the spoliations, and a recollection of the light in which they had been represented, were a ground of the pause; that on that supposition he was probably influenced in signing the Treaty when he did, by an expectation that such a mark of confidence in the British Government would produce an abolition of the unlawful proceeding, and, consequently, if it had been foreseen that the spoliations would have been continued as we find them to be, the Treaty would not have been then signed, or if it had not then been signed, it would not be signed, under the circumstances of the moment when it falls under our consideration.

He should conclude, he said, with taking notice of two considerations which had been much used as inducements to carrying the Treaty into effect.

1. It was said that the greater part of the Treaty was to continue two years only after the present war in Europe; and that no very great evils could grow out of it within that period. To this he replied, in the first place, that ten of the articles containing many very objectionable stipul .ions were perpetual. In the next place, that it would be in the power of Great Britain, at the expiration of the other articles, to produce the same causes for a renewal of them, as are now urged in their favor. If we are now to enforce the Treaty, lest Great Britain should stir up the Indians, and refuse to pay the merchants for the property of which she has plundered them, can she not at the end of two or three years plunder them again to the same or a greater amount? Cannot the same apprehensions also be then revived with respect to the

Indians, and will not the arguments then be as strong as they are now, for renewing the same Treaty, or making any other equal sacrifice that her purposes may dictate?

2. It was asked, what would be the consequence of refusing to carry the Treaty into effect? He answered, that the only supposable consequence was, that the Executive, if governed by the prudence and patriotism, which he did not doubt would govern that department, would, of course, pursue the measures most likely to obtain a reconsideration and remodification of the offensive parts of the Treaty. The idea of war, as a consequence of refusing to give effect to the Treaty, was too visionary and incredible to be admitted into the question. No man would say that the United States, if an independent people, had not a right to judge of their own interests, and to decline any Treaty that did not duly provide for them. A refusal, therefore, in such cases, could give no cause, nor pretext, nor provocation, for war or for any just resentment. But apart from this, was it conceivable that Great Britain, with all the dangers and embarrassments which are thickening upon her, would wantonly make war on a country which was the best market she had in the world for her manufactures, which paid her an annual balance in specie of ten or twelve millions of dollars, and whose supplies were moreover essential to an important part of her dominions? Such a degree of infatuation ought not to be ascribed to any nation. And at the present crisis, for reasons well known, an unprovoked war with Great Britain, on this country, would argue a degree of madness greater than under any other circumstances that could well be imagined.

With all the objections therefore to the Treaty which he had stated, he hoped that it would not now be carried into effect; and that an opportunity would take place for reconsidering the subject on principles more just and more favorable to the United States.[1]

[1] *Annals of Cong., 4th Cong., 1st Sess.*, 976. Madison also made notes for another speech on the treaty as follows:
The Patrons of the Treaty power to take part of Const[n]

TO THOMAS JEFFERSON. MAD. MSS.

PHILAD[A], Dec. 19, 1796

DEAR SIR

The returns from N. Hampshire, Vermont, S. C., & Georg[a] are still to come in, & leave the event of

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—— Easy to say P. & S. have power to Treaty & treaties supreme laws.

—— Equally easy to say Cong[s] have power to legisl: & then acts laws.

—— Apparent collision the most they can pretend to.

—— Difference of opinion. 1. as to extent of Treaty power.
2. as to nature of the oblig[n] on Cong[s]

—— The prevailing opinion is that the power unlimited & the obligation inviolable so as to supersede all existing laws, & to make Cong[s] ministerial in providing laws.

—— If this high & paramount operation belong to Treaties it must proceed either

1.—from the nature of the Treaty & Legisl powers, or

2—from the terms of the Constitution, or

3—from some palpable absurdity or grievous inconvenience of the contrary doctrine

1—— Not from the nature of the Treaty making & law making power.

—— In general law—the highest exertion of power, & the legis[l]: supreme over other Depart[s]

—— No instance where Treaty power is not vested in the legislature, as Sweden, Poland, Venice, France, Spain.

—— except G. B. where limited to *verge* [?] o*f Prerogative*

See Vattel p. 210 & 211; p. 394 & 5.

In Gov[t] of U. S.—law making power in some respects superior & directory—in no respect *less than* co-ordinate with other Dep[ts] .

—— Case of repeal[g] a law
—of the same specific nature & force repeal equivalent to enactment when repeal[g] or suspending law repealed

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Besides then y[e] objection to [illegible] Supreme one capable of annulling the other—it is inconsonant to const[l] principles generally—& to the spirit of our own, that laws be repeal[d] but by law

—— Contended that Treaty power relates to a new Region of Legislation—embraces new objects & operates in new modes.

the Election in some remaining uncertainty. It is but barely possible that Adams may fail of the highest number. It is highly probable, tho' not absolutely certain, that Pinkney will be third only on

—— Then can not interfere with the Region the objects or the modes of Congress[l] legislation.
—— But if Treaties are to have the force given to them
They operate within the sphere of Cong[s]
They operate on the same objects [illegible], on commerce
They operate in the same mode
by the same officers
under the same sanctions
with the same results.

It is true that they are distinguished by circumstances of mutuality—but this consideration or inducement only—not change in the opperation itself.

Not even mutuality—as commercial laws—for money

A law in persuance of contract, domestic or foreign law

From this view—the nature of ye case, no argument
See State Treaties & compacts Can these repeal laws of U. S.?
2 Does not proceed from the terms of the Constitution
—— if it does, obey,—but, it should be clear.
—— *General* & *specific* grant to be otherwise expounded
—— See text—Constitution, laws Trea[s] to "land"—no superiority expressed contrary implied
—— True meaning—Const: laws conformable to it—& Treaties consistant with both—gen[l] code, supreme law [?]

This ye meaning if text stopt there —but following words preclude every other
—— To express subordination of State laws—& not fed[l] laws—where less dbtful exempts the latter.

Mary[d] V[a] N & [o] C[a] amend[s] See Ratifications f. 15—19—25 for sense of those States, as to fund[l] and inalienable rights.
See also f. 29 art 23[d] for sense of N. C. as explained by Mr Holland.

the list You must prepare yourself therefore to be summoned to the place Mr. Adams now fills. I am aware of the objections arising from the inadequateness of the importance of the place to the sacrifices

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3. Does it proceed from palpable absurdity, or grievous inconvenience?
—— Unity in Govt. remains
—— inconvenience of conflicting authorities ye other meas [?]
—— Foreign Govt. bound to know ours
It is said,—That Congress have no legislative agency, in case of Treaties, because of Constn silent, not devolve on them.
—— all States where legisl & Ex. separate give the power, except G. B.
—— Congs can pledge faith as to money &c
—— States can make compacts by *Legis'l*
—— Congs not Ex. consent to them.
☞ If Congs had power to treat cd they supersede the specified powers of the Executive.
But if Congs cant treat, can alone legislate & as when they want Treaty depend on Ex., so when laws wanted Ex. depend on Congs
Said that Parlt extorted from Perrogve that this that no negative on Treaties but one [?] and that the worst part of that Govt and that interferes with Treaties, only for [illegible].
—— Tory doctrine & not true, K. & Coms both extort from order of nobles
—— best part of Nat Govt —if King by treaty as with Hanovr cd bring troops into G. B. fatal to legisl. & to liberty.
—— if no interference, for same reason as no negative, Royal influence
—— if to impeach & supplant—execute Treaty first, discuss it afterwards.

Old confederation
—— Obscurity & irregularity, its characters
—— No specific investment of powers in States
—— Supremacy over State laws, now specified, now over Congs
—— Unity of Govt now.—then variety of Gov.
Contemporary evidence

you would be willing to make to a greater prospect of fulfilling the patriotic wishes of your friends; and from the irksomeness of being at the head of a body whose sentiments are at present so little in unison

—— heretofore demurred to as on
—— Bank
—— Carriage tax
—— suability of States

But ready to meet it—Virg[a] Debates
J. M. Vol. 2. f. 137—Vol 3. f. 82—84–93 94–95.
G. W. Vol. 3. f. 83–84–86–87.
Corbin Vol 2. 152 Vol. 3. 89–90
E R—Vol 3—85

2. ideas—Treaty power limited
—reference to British model

N. Carolina Debates p. 152–153
Pen[a] d[o] same illustration by Brit: Model.

Ratification &c. f. 3–5–13–16–18 & 19–21—25–27–29.
These explanatory, as well as alterative & inconsistant with idea of giving war &c to P. & S.
—— Care of Small States.
House of Rep[s] less responsible &c
— longer ye power & fewer ye hands more interest for it—more object of foreign seduction
— tendency to encroach[t]—to be tested by foreign experience—in *popular*—in *limited* Gov[t].
— domestic experience
— further opportunities & prospects.

Objections
1. If war Ex. perrog[ve]—then three powers of war
2. Treaty power extend to *all* powers of Cong[s]
3. Restrictions on Cong[s] —more on Treaties
4. Case of appropriations the stronger—as the check is reserved to the people, who can chuse new members, every two years.

Not conceivable that the people so jealous of the sword & the

with your own. But it is expected that as you had made up your mind to obey the call of your country, you will let it decide on the particular place where your services are to be rendered. It may even be said, that as you submitted to the election knowing the contingency involved in it, you are bound to abide by the event whatever it may be. On the whole, it seems *essential* that you should not refuse the station which is likely to be your lot. There is reason to believe, also, that your neighbourhood to

purse sh^d^ have intended to put both into y^e^ hands of P. & S. & make Congress—the mere heralds to proclaim war—the agents—to recruit armies & the Cashiers, to pay out money for them.

TO JAMES MONROE.

PHILAD^A^, May 14, 1796

. . . Many of the *means*[1] *by which this majority was brought ab^t^ will occur to you.* But it is to be *ascribed principally to an appeal to petitions* under the *mercantile influence, & the alarm of war.* A *circular letter from the Merch^ts^ of Phila gave the signal to all other towns.* The *people were everywhere called on to* chuse *between peace & war, & to side with the Treaty if they preferred the former.* This *stratagem produced in many places a fever & in New Eng^d^ a delirium for the Treaty wh soon covered the table with petitions.* The *counter petitions, tho powerful from Phila, & respectable from some other quarters did not keep pace.* Indeed there was not *time for distant parts* where *the Treaty was odious to express their sentiments before the occ was over.* Besides the *alarm of war in the smaller States, a* great *excitement* was *produced in them by the appeal of the Pr in his message, to their particular interest in the powers of the Senate.* What the effect of this *whole business will be on the public mind cannot yet be traced* with certainty. For the *moment at least it presses hard on the republican interest. It* probably *would have been better if the great majority* existing at one *moment had been* taken *advantage of for a strong preface in the tone of Dearborn,* and if the *Treaty party had* then *carried their object with the consequences on their own heads.* The final *turn of the* majority ought *at least to have been*

[1] Italics for cypher.

Adams[1] may *have a valuable effect on his councils* particularly in *relation to our external system.* You know that *his feelings* will not *enslave him to the* example of *his predecessor.* It is certain that his *censures of our paper system* & the intrigues at *new York for setting P* [inckney] *above him,* have fixed an *enmity with the British faction.* Nor should it pass for nothing, that the true interest of *new england* particularly requires reconciliation with France as the road to her commerce, *add to the whole that he* is said

sooner prepared for. This was *in fact contemplated.* But *before some were ripe for the arrangement others were rotten.* As soon as the *subject was finished,* an *explanatory article, signed by Bond & Pickering,* marked with *sundry curious features, was laid* before *the Senate, & has, been ratified.* The *avowed object is to declare* that *the Indian Treaty* which requires a special license to Traders residing at the Indian Towns shall *not affect the Brit^h privileges, under the third article.* This *when* known *by the public, will justify* an important ground of *opposition to the Treaty. Adèt seems to have conducted himself with* great *circumspection* throughout the *crisis here,* nor do *I know what* or *whether anything escapes him since the conclusion of it.* It will be deeply interesting to *know how France will take it all.* I hope no *rash councils will prevail with her.* You *can foresee the consequences of such here.* Whilst the *war lasts Engl^d will* command *most attention,* because *she can do this country most harm.* In *peace, Fr will* command *most attention,* because *she can do it most good.* This view of the subject, may perhaps be worth your development *on fit occasions.* Among the bills just passed the H. of Rep^s is one prohibiting the sale of prizes in our ports. It did not pass without doubts & opposition. The real object with most was to protect Spanish & Dutch vessels as much as possible, on the supposition that the British Treaty protected hers in this respect ag^st all nations. It is now generally understood that the *President will retire. Jefferson* is the *object on one side Adams* apparently *on the other.* The *secondary object still unsettled.* The *general result is rendered doubtful* by the probable complexion of the *New York legislature,* and *by a late law of Pen* for *chusing Electors by a gen^l ticket.* If the decision should result *to the House of R^s it will be safe. . . .—Mad. MSS.*

[1] Italics for cypher.

to speak of *you now in friendly terms* and will no doubt be *soothed by your acceptance of a place subordinate to him.* It must be confessed however that all these calculations are qualified by *his political principles* and *prejudices.* But they add weight to the *obligation, from which you must not withdraw yourself.*

You will see in the answer to the P's speech much *room for criticism.* .You must, for the present, be *content to know that it resulted from a choice of evils.* His *reply to the* foreign *paragraph indicates a good* effect *on his mind.* Indeed *he cannot but wish to avoid entailing a war on his successor.* The *danger lies in the* fetters *he has put on himself & in the irritation & distrust of the French government.*

TO THOMAS JEFFERSON. MAD. MSS.

PHILAD^{A}, Jan^{y} 15, 1797.

DEAR SIR

The last mail brought me your favour of Jan^{y} 1, inclosing an unsealed one for Mr. A. & submitting to my discretion the eligibility of delivering it. In exercising this delicate trust I have felt no small anxiety, arising by no means however from an apprehension that a free exercise of it could be in collision with your real purpose, but from a want of confidence in myself, & the importance of a wrong judgment in the case. After the best consideration I have been able to bestow, I have been led to suspend the delivery of the letter, till you should have an opportunity of deciding on the sufficiency or in-

sufficiency of the following reasons. 1. It is certain that Mr. Adams, on his coming to this place, expressed to different persons a respectful cordiality towards you, & manifested a sensibility to the candid manner in which your friends had in general conducted the opposition to him. And it is equally known that your sentiments towards him personally have found their way to him in the most conciliating form. This being the state of things between you, it deserves to be considered whether the idea of bettering it is not outweighed by the possibility of changing it for the worse. 2. There is perhaps a general air on the letter which betrays the difficulty of your situation in writing it, and it is uncertain what the impression might be resulting from this appearance. 3. It is certain that Mr. A. is fully apprized of the trick aimed at by his Pseudo friends of N. Y. and there may be danger of his suspecting in mementos on that subject, a wish to make his resentment an instrument for revenging that [of] others. A hint of this kind was some time ago dropped by a judicious & sound man who lives under the same roof, with a wish that even the Newspapers might be silent on that point. 4. May not what is said, of "the sublime delights of riding in the storm, &c." be misconstrued into a reflection on those who have no distaste to the helm at the present crisis? You know the temper of Mr. A. better than I do: but I have always conceived it to be rather a ticklish one. 5. The tenderness due to the zealous & active promoters of your election, makes it doubt-

ful whether their anxieties & exertions ought to be depreciated by anything implying the unreasonableness of them. I know that some individuals who have deeply committed themselves, & probably incurred the political enmity at least of the P. elect, are already sore on this head. 6. Considering the probability that Mr. A.'s course of administration may force an opposition to it from the Republican quarter, & the general uncertainty of the posture which our affairs may take, there may be real embarrassments from giving written possession to him, of the degree of compliment & confidence which your personal delicacy & friendship have suggested,

I have ventured to make these observations because I am sure you will equally appreciate the motive & the matter of them; and because I do not view them as inconsistent with the duty & policy of cultivating Mr. Adam's favorable dispositions, and giving a fair start to his Executive career. As you have, no doubt retained a copy of the letter I do not send it back as you request. It occurs however that if the subject should not be changed in your view of it, by the reasons which influence mine, & the delivery of the letter be accordingly judged expedient, it may not be amiss to alter the date of it; either by writing the whole over again, or authorizing me to correct that part of it.

The special communication is still unmade. It is I am told to be extremely voluminous. I hope, under the sanction of the P.'s reply to our address, that it will be calculated rather to heal than irritate

the wounded friendship of the two Countries. Yet, I cannot look around at the men who counsel him, or look back at the snares into which he has hitherto been Drawn without great apprehensions on this subject. Nothing from France subsequent to the arrival of Pinkney. The negociations for peace you will see, are suspended. The accession of Spain to the war enforces the probability that its calamities are not likely yet to be terminated. The late News from the Rhine & from Italy are on the whole favorable to the French. The last battle was on the 27th Oc^r^ in the Hunspruck, and ended in a victory on their side. The House of Rep^s^ are on direct taxes, which seem to be so much nauseated & feared by those who have created both the necessity & odium of them, that the project will miscarry. Hamilton, you will recollect assured the farmers that all the purposes of the Gov^t^ could be answered without resorting to lands Houses or stock on farms. This deceptive statement with other devices of his administration, is rising up in judgment ag^st^ him, and will very probably soon blast the prospects which his ambition & intrigues have contemplated. It is certain that he has lost ground in N. Y. of late; & his treachery to Adams, will open the eyes of N. England.

TO JAMES MADISON.

MAD. MSS

PHILAD^A^ Jan^y^ 15. 97

HOND SIR

The last post brought me your favor of Jan^y^ 2^d^ It will be well for you to send on your list of articles

wanted as soon as possible. I hope Kyser will not disappoint us in the Clover Seed: and that other chances at Fred^s & elsewhere will be watched. As I shall get some at all events even here, I wish a Box to be made as soon as can be done. It will be the more necessary the more scanty the supply. I am astonished at the price given to J^s Coleman for his fellow James. I am sure the profits I make will not justify any thing like that. His other fellow is slow, & infirm tho of good dispositions; and on the latter consideration & my desire to open land, I am willing to keep him as heretofore. If J. C. can get a better bargain I do not expect or wish him to make any sacrifice in my favor. I really do not see in the general prospect of things, or in my particular case, any reason for my enlarging the price.

I promised Doc^r Priestly at his request last year, a sample of our red earth, which I forgot to bring with me. He lately reminded me of it, and I am anxious now to repair the omission. For this purpose I must beg you have a few pounds taken from the ridge back of the Garden, put into a box & sent immediately to M^r Blair to come around by the first vessel. As I am particularly anxious on this point I hope it will not escape your attention.

Sam^l French's claim is refused on the ground of his not having served to the end of the war, in the army of the U. S. without which the law does not give him a title to land. We are all as usual & offer our affections. Fanny writes as you will see by the inclosed.

Y^r aff^e son

TO THOMAS JEFFERSON. MAD. MSS.

PHILAD^A, Jany 29, 1797.

DEAR SIR

Yours covering an unsealed letter to Mr. Tazewell came duly to hand, and will be turned to the use you wish. As you take the Philad^a Gazette in which the Belligerent answer to Adêt's note has been printed in toto, I refer to that for the posture & prospect of things with France. The British party since this overt patronage of their cause, no longer wear the mask. A war with France & an alliance with G. B., enter both into print and conversation; and no doubt can be entertained that a push will be made to screw up the P. to that point before he quits the office. The strides latterly made with so much inconsistency as well as weakness in that direction, prepare us for receiving every further step without surprise. No further discovery has been made of the mind of the P. elect I cannot prevail on myself to augur much that is consoling from him. Nothing from abroad; nor more at home than you will gather from the Newspapers.

TO JAMES MADISON. MAD. MSS.

PHILAD^A March 12, 1797

HON'^D SIR

I wrote you by the last mail, and add this by M^r Jefferson. Lest my last letter should by any possibility have miscarried, I repeat my request that my name may not be suffered to get on the Pole for the County election. If M^r Jefferson should call & say

anything to counteract my determination I hope it will be regarded as merely expressive of his own wishes on the subject, & that it will not be allowed to have the least effect. In declining to go into the Assembly should there really be a disposition to send me there I am sincere & inflexible. I hope I shall hear from you by the next mail, on the subject of Mordecai & the horses; being extremely anxious now to be on the journey, especially as we are to make visits to Berkeley & Fred'k on the way home. At present the roads are made bad by a snow succeeded by rain which has nearly carried it off; but the winds of March will soon put them in order. If the same weather should have happened with you it will have been a fine opportunity for sowing the Clover seed I sent, & which I hope got to hand in time for the purpose. The greater part of what I sent was purchased for a vessel intended to sail last fall, & cost 15 doll^{rs} which with freight &c will exceed the Richmond price. I really think it was an error to be deterred by that price, considering the immense importance of the article, especially in laying a foundation for a meliorating plan of husbandry. The proper remedy for such a disappointment, I am told by a very experienced & intelligent farmer of this neighbourhood, is to sow in the fall on the stubble of the wheat or rye. He says this is his practice whenever he can not get seed for Spring sowing the fields or when the seed does not take effect, & that the protection & putrefaction of the stuble ensures a full crop the following year, so that

there is no other loss than the first fall pasture. I consider this as a valuable hint, to beginners as it doubles the chance of getting Clover into a rotation.

You will see by the inclosed paper that the last acc^{ts} from Paris respecting negotiations for peace & the temper of France towards this Country, are not favorable. This resentment is the fruit of the British Treaty, which many of its zealous advocates begin now to acknowledge was an unwise & unfortunate measure. The accounts are not authentic, & probably not accurate, but coming through so many different channels they are thought to be true in substance.

We continue well & unite in our usual offerings. Flour at 9½ dollars.

Your affect^{e} Son

TO THOMAS JEFFERSON. MAD. MSS.

Feb^{y}, 1798.

DEAR SIR,—Since my last I have rec^{d} yours of Feb^{y} 8, with a continuation of the Gazettes down to that date, with the exception only mentioned already of the Gazette of Jan^{y} 23. I am glad to find the public opinion to be taking the turn you describe on the subject of arming. For the public opinion alone can now save us from the rash measures of our hot-headed Executive: it being evident from some late votes of the House of Rep^{s}, particularly in the choice of Managers for the Impeachment, that a majority there as well as in the Senate are ready to

go as far as the controul of their constituents will permit. There never was perhaps a greater contrast between two characters than between those of the present President & his predecessor, altho' it is the boast & prop of the present that he treads in the steps of his predecessor. The one cool considerate & cautious, the other headlong & kindled into flame by every spark that lights on his passions: the one ever scrutinizing into the public opinion, and ready to follow where he could not lead it; the other insulting it by the most adverse sentiments & pursuits. W. a hero in the field, yet overweighing every danger in the Cabinet—A. without a single pretension to the character of a soldier, a perfect Quixotte as a statesman: the former chief magistrate pursuing peace every where with sincerity, tho' mistaking the means; the latter taking as much pains to get into war, as the former took to keep out of it. The contrast might be pursued into a variety of other particulars —the policy of the one in shunning connections with the arrangements of Europe, of the other in holding out the U. S. as a makeweight in the Balances of power; the avowed exultation of W. in the progress of liberty every where, & his eulogy on the Revolution & people of France posterior even to the bloody reign & fate of Robespierre—the open denunciations by Adams of the smallest disturbance of the ancient discipline order & tranquillity of despotism, &c &c &c. The affair of Lyon & Griswold [1] is bad eno'

[1] Griswold called Lyon (not in debate) a coward, whereupon Lyon spat in Griswold's face and the two engaged in fisticuffs on the floor of the House.

every way, but worst of all in becoming a topic of tedious & disgraceful debates in Congress. There certainly could be no necessity for removing it from the decision of the parties themselves before that tribunal, & its removal was evidently a sacrifice of the dignity of the latter to the party manœuvre of ruining a man whose popularity & activity were feared. If the state of the House suspended its rules in general, it was under no obligation to see any irregularity which did not force itself into public notice; and if Griswold be a man of the sword, he sh[d] not have permitted the step to be taken, if not, he does not deserve to be avenged by the House. No man ought to reproach another with cowardice, who is not ready to give proof of his own courage. I have taken some pains but in vain to find out a person who will engage to carry the Mail from Fred[g] to Charlottesville. When I was in the neighbourhood of the latter I suggested the propriety of an effort there for the purpose, but do not know that it will be more successful. Our winter has continued without snow & rather dry, and our Wheat fields wear the most discouraging aspect.

Adieu.

TO THOMAS JEFFERSON. MAD. MSS.

April 2d, 1798.

DEAR SIR,—Since my last, I am in debt for your two favors of the 15th & 22, the Gazettes of the 3,

6 7 & 8 Ulto, with a regular continuation to the 22d—two statements from the Treasury Department, and Paine's letter to the French people & armies. The President's message [1] is only a further development to the public, of the violent passions, & heretical politics, which have been long privately known to govern him. It is to be hoped however that the H. of Rep[s] will not hastily eccho them. At least it may be expected that before war measures are instituted, they will recollect the principle asserted by 62 vs. 37, in the case of the Treaty, and insist on a full communication of the intelligence on which such measures are recommended. The present is a plainer, if it be not a stronger case, and if there has been sufficient defection to destroy the majority which was then so great & so decided, it is the worst symptom that has yet appeared in our Councils. The constitution supposes, what the History of all Govts demonstrates, that the Ex. is the branch of power most interested in war, & most prone to it. It has accordingly with studied care, vested the question of war in the Legisl. But the Doctrines lately advanced strike at the root of all these provisions, and will deposit the peace of the Country in that Department which the Constitution distrusts as most ready without cause to renounce it. For if the opinion of the P. not the facts & proofs themselves are to sway the judgment of Congress, in declaring war, and if the President in the

[1] Of March 19th.

recess of Congr[s] create a foreign mission, app[t] the minister, & negociate a War Treaty, without the possibility of a check even from the Senate, untill the measures present alternatives overruling the freedom of its judgment; if again a Treaty when made obliges the Legis. to declare war contrary to its judgment, and in pursuance of the same doctrine, a law declaring war, imposes a like moral obligation, to grant the requisite supplies until it be formally repealed with the consent of the P. & Senate, it is evident that the people are cheated out of the best ingredients in their Gov[t], the safeguards of peace which is the greatest of their blessings. I like both your suggestions in the present crisis. Congress ought clearly to prohibit arming, & the P. ought to be brought to declare on what ground he undertook to grant an indirect licence to arm. The first instructions were no otherwise legal than as they were in pursuance of the law of Nations, & consequently in execution of the law of the land. The revocation of the instructions is a virtual change of the law, & consequently a usurpation by the Ex. of a legislative power. It will not avail to say that the law of Nations leaves this point undecided, & that every nation is free to decide it for itself. If this be the case, the regulation being a Legislative not an Executive one, belongs to the former, not the latter Authority; and comes expressly within the power, "to define the law of Nations," given to Congress by the Constitution. I do not expect however that the Constitutional party in the H. of R. is strong eno-

to do what ought to be done in the present instance. Your 2d idea that an adjournment for the purpose of consulting the constituents on the subject of war, is more practicable because it can be effected by that branch alone if it pleases, & because an opposition to such a measure will be more striking to the public eye. The expedient is the more desirable as it will be utterly impossible to call forth the sense of the people generally before the season will be over, especially as the Towns, &c., where there can be most despatch in such an operation are on the wrong side, and it is to be feared that a partial expression of the public voice, may be misconstrued or miscalled, an evidence in favor of the war party. On what do you ground the idea that a decln of war requires ⅔ of the Legislature? The force of your remark however is not diminished by this mistake, for it remains true, that measures are taking or may be taken by the Ex. that will end in war, contrary to the wish of the Body which alone can declare it.

TO THOMAS JEFFERSON. MAD. MSS.

April 15, 1798.

DEAR SIR,—My last answered yours of the 21, since which I recd on friday last your three favors of the 29 Ult. of Apl 5 & 6.[1] I have no reason to

[1] In the letter of April 6th Jefferson gave him the gist of the "X Y. Z." correspondence.

suspect that any of your letters have miscarried, or been opened by the way. I am less able to say whether mine have all reached you, as I have generally written them in haste, & neglected to keep a note of their dates. I will thank you to mention in your acknowledgement of this, whether you recd one from me inclosing a letter to F. A. Muhlenburg, & whether he certainly rec^{d} it. It related to a case of humanity & required an answer which has never come to hand.

The effect of the P^{s} speech in F. is less to be wondered at, than the speech itself, with other follies of a like tendency is to be deplored. Still the mode & degree of resisting them is rather meeting folly with folly, than consulting the true dignity & interest which ought to prescribe such cases. The conduct of Taleyrand is so extraordinary as to be scarcely credible. I do not allude to its depravity, which, however heinous, is not without examples. Its unparalleled stupidity is what fills one with astonishment. Is it possible that a man of sagacity as he is admitted to be, who has lived long eno. in this Country to understand the nature of our Govt—who could not be unaware of the impossibility of secrecy & the improbability of success in pursuing his propositions thro' the necessary forms, who must have suspected the Ex. rather of a wish to seize pretexts for widening the breach between the two Republics, than to make use of any means however objectionable to reconcile their differences; who must have been equally suspicious of the probable inclination

of some one or other of the Envoys—is it possible, that such a man under such circumstances, could have committed both his character & safety, by such a proposition? If the evidence be not perfectly conclusive, of which I cannot judge, the decision ought to be agst the evidence, rather than on the side of the infatuation. It is easy to foresee however the zeal & plausibility with which this part of the despatches will be inculcated, not only for the general purpose of enforcing the war measures of the Ex. but for the particular purpose of diverting the public attention from the other more important part, which shews the speech & conduct of the P. to be now the great obstacle to accommodation. This interesting fact must nevertheless finally take possession of thinking minds; and strengthen the suspicion, that whilst the Ex. were pursuing ostensible plans of reconciliation, and giving instructions which might wear that tendency, the success of them was indirectly counterworked by every irritation & disgust for which opportunities could be found in official speeches & messages, answers to private addresses harangues in Congress and the vilest insults & calumnies of Newspapers under the patronage of Government. The readiness with which the papers were communicated & the quarter proposing the call for them, would be entitled to praise, if a mass of other circumstances did not force a belief that the view in both, was more to inflame than to inform the public mind. It is not improbable that the influence of the first impressions in checking the rising spirit in N. England,

and bearing up the party of Jay in N. Y. whose re-election is brought into danger by the pestilent consequences experienced from his Treaty, had considerable share in the motive.

The negative declaration proposed by Mr. S.[1] is liable to so many specious objections, that I shall be surprised if a willing majority does not take advantage of them. In ordinary cases, the mode of proceeding is certainly ineligible. But it seems equally obvious that cases may arise, for which that is the proper one. Three of these occur, where there poes not appear any room to doubt on the subject. 1. where nothing less than a declaration of pacific intentions from the department entrusted with the power of war, will quiet the apprehensions of the constituent body, or remove an uncertainty which subjects one part of them to the speculating arts of another. 2. where it may be a necessary antidote to the hostile measures or language of the Ex. Departmt. If war sentiments be delivered in a speech to Congress which admits of a direct answer, & the sentiments of Congress be against war it is not doubted that the counter sentiments might & ought to be expressed in the answer. Where an extra message delivers like sentiments, and custom does not permit a like explanation of the sentiments of the Legislature, there does not appear any equivalent mode of making it, except that of an abstract vote. 3. Where public measures or appearances,

[1] Sprigg, of Md.'s, resolution was that it was inexpedient to go to war with France.

may mislead another nation into distrust of the real object of them, the error ought to be corrected; and in our Govt—where the question of war or peace lies with Congress, a satisfactory explanation cannot issue from any other Department. In Govts where the power of deciding on war is an Ex. prerogative it is not unusual for explanations of this kind to be given either on the demands of foreign Nations, or in order to prevent their improper suspicions. Should a demand of this sort be at any time made on our Govt—the answer must proceed, if thro' an Executive functionary, from the war prerogative, that is, from Congr—and if an answer could be given, on demand, a declaration without a demand may certainly be made with equal propriety, if there be equal occasion for it. The discovery of Mr. A.'s dislike to the City of Washington will cause strong emotions. What sort of conscience is that which feels an obligation on the Govt to remove thither, and a liberty to quit it the next day? The objection to the magnificence of the President's House belongs to a man of very different principles from those of Mr. A. The increase of expence therefore without a probable increase of salary in proportion, must be the real ground of objection. I have looked over the two papers which you consider as so threatening in their tendency.[1] They do not, I own, appear to

[1] The papers appeared in Fenno's *United States Gazette*, signed "Marcellus" and were not, as Jefferson supposed, by Hamilton. "For heaven's sake, then take up your pen, and do not desert the public cause altogether," Jefferson wrote to Madison, April 5th.—*Writings* (Ford), vii. 231.

me exactly in the same light; nor am I by any means satisfied that they are from the pen you ascribe them to. If they are, there certainly has been a disguise aimed at in many features of the stile. I differ still more from you as to the source from which an antidote, if necessary, ought to come. But waiving every thing of that sort, there is really a crowd & weight of *indispensable* occupations, on my time, which it would be very tedious to explain, but wch I pledge myself, will justify me in leaving such tasks to others, not only commanding more time for them, but in every respect more favorably situated for executing them with advantage & effect. And it is with no small pleasure I observe that some pens are employed which promise the public all the lights with respect to their affairs, which can be conveyed to them thro' the channels of the press.

It is now become certain that not half crops of wheat can be made. Many will not get back more than their seed, & some not even that. We have lately had a severe spell of N. E. rain, which in this neighbourhood swept off at least 15 Per C^{t} of the Cattle; and from accts in different directions it appears to have been equally fatal. We are at present in the midst of a cold N. W. spell, which menaces the fruit. The tops of the Blue Mountains are tinged with snow, & the Therm^{r} this morning was at 31°. It does not appear however that the mischief is yet done. The coming night, if no sudden change takes place, must, I think, be fatal.

If Mr. Bailey has not yet taken up his note, be so good as to have the inclosed forwarded to him.

TO THOMAS JEFFERSON.[1] MAD. MSS.

May 20, 1798

. . . . . .

The Alien bill[2] proposed in the Senate is a monster that must forever disgrace its parents. I should not have supposed it possible that such an one could have been engendered in either House, & still persuade myself, that it cannot possibly be fathered by both. It is truly to be deplored that a standing army should be let in upon us by the absence of a few sound votes. It may however all be for the best. These addresses to the feelings of the people from their enemies may have more effect in opening their eyes, than all the arguments addressed to their understandings by their friends. The President, also, seems to be co-operating for the same purpose.

[1] The beginning of the letter relates entirely to building supplies which he wished Jefferson to procure for him.

[2] April 26th Jefferson wrote: "One of the war party, in a fit of unguarded passion, declared some time ago they would pass a citizen bill, an alien bill, and a sedition bill; accordingly, some days ago, Coit laid a motion on the table of the H of R for modifying the citizen law" *Writings* (Ford), vii., 244. May 3d he wrote: "The alien bill, proposed by the Senate, has not yet been brought in. That proposed by the H of R has been so moderated, that it will not answer the passionate purposes of the war gentlemen" (*Id.*, 247). The Senate bill reached Madison just before he wrote his letter of May 20th. This marks the beginning of his consideration of the subject.

Every answer he gives to his addressers unmasks more and more his principles & views. His language to the young men at Phª is the most abominable & degrading that could fall from the lips of the first magistrate of an independent people, & particularly from a Revolutionary patriot. It throws some light on his meaning when he remarked to me, "that there was not a single principle the same in the American & French Revolutions;" & on my alluding to the contrary sentiment of his predecessor expressed to Adêt on the presentment of the Colours, added, "that it was false let who would express it." The abolition of Royalty was it seems not one of his Revolutionary principles. Whether he always made this profession is best known to those, who knew him in the year 1776.—The turn of the elections in N. Y. is a proof that the late occurrences have increased the noise only & not the number of the Tory party. Besides the intrinsic value of the acquisition, it will encourage the hopes & exertions in other States. You will see by the Newspapers the turn which a Townmeeting took in Fredericksbg I forgot to acknowledge the pamphlet containing the last Despatch from the Envoys recd with your letter of the 10th. It is evidently more in the forensic than Diplomatic stile, and more likely in some of its reasonings to satisfy an American Jury than the French Government. The defence of the provision article is the most shallow that has appeared on that subject. In some instances the reasoning is good,

but so tedious and tautologous as to insult the understanding as well as patience of the Directory, if really intended for them, and not for the partial ear of the American public. The want of rain begins to be severely felt, and every appearance indicates a continuance of it. Since the 10th of April there has fallen but one inch of water, except a very partial shower of less than ½ an inch.

Adieu. Affec^ly

TO THOMAS JEFFERSON. MAD. MSS.

June 3, 1798

DEAR SIR,—Friday's mail brought me your favor of May 24. The letter from S. Bourne had previously reached us thro' a Fred^g paper. It is corroborated I find by several accounts from different sources. These rays in the prospect will if I can judge from the sensations in this quarter, have an effect on the people very different from that which appears in the public councils. Whilst it was expected that the unrelenting temper of France would bring on war, the mask of peace was worn by the war party. Now that a contrary appearance on the side of France is intimated, the mask is dropped, and the lye openly given to their own professions by pressing measures which must force France into War. I own I am not made very sanguine by the reported amendment in the posture of our Negociators, first because the account may not be very correct, and next because there are real difficulties to be overcome, as well as

those which the pride of one or other of the parties may create, not to mention the probable arrival of what has passed here before the scene is closed there. But the palpable urgency of the Ex. & its partizans to press war in proportion to the apparent chance of avoiding it, ought to open every eye to the hypocrisy which has hitherto deceived so many good people. Should no such consequence take place it will be a proof of infatuation which does not admit of human remedy. It is said, and there are circumstances which make me believe it, that the hot-headed proceedings of Mr. A. are not well relished in the cool climate of Mount Vernon. This I think may fairly be inferred from the contrast of characters and conduct, but if it has been expressed it must have been within a very confidential circle. Since my last there has been a sequel of fine & extensive rains. We have had a tolerable, tho' not an equal or sufficient share of them. Your neighbourhood, I fancy, has fared better.

If Barnes has not sent off the Glass pullies &c. please to order as much of the proper chord as will be wanted for the latter.

Very aff^{y} y^{r}

TO THOMAS JEFFERSON. MAD. MSS.

June 10, 1798

DEAR SIR,—I have duly received your favor of the 31 Ult: & am glad to find mine are recd as

regularly as yours. The law for capturing French privateers may certainly be deemed a formal commencement of hostilities, and renders all hope of peace vain, unless a progress in amicable arrangements at Paris not to be expected, should have secured it agst the designs of our Goverm^t. If the Bill suspending commerce with the French Dominions passes, as it doubtless will, the French Government will be confirmed in their suspicion begotten by the British Treaty, of our coalition in the project of starving their people, and the effect of the measure will be to feed the English at the expence of the farmers of this Country. Already flour is down, I hear, at 4 dollars a barrel. How far the views of the Gov^t will be answd by annihilating the ability to pay a land tax at the very moment of imposing it, will be best explained by the experim^t. Looking beyond the present moment it may be questioned whether the interest of G. B. will be as much advanced by the sacrifice of our trade with her enemies as may be intended. The use of her manufactures here depends on our means of payment, & then on the sale of our produce to the markets of her enemies. There is too much passion, it seems in our Councils to calculate consequences of any sort. The only hope is that its violence by defeating itself may save the Country. The answers of Mr. Adams to his addressers form the most grotesque scene in the tragicomedy acting by the Goverm^t. They present not only the grossest contradictions to the maxims measures & language of his predecessor and

the real principles & interests of his Constituents, but to himself. He is verifying compleatly the last feature in the character drawn of him by Dr. F., however his title may stand to the two first, "Always an honest man, often a wise one, but sometimes wholly out of his senses." I thank you for the offspring of the Senatorial Muse, which shall be taken care of. It is truly an unique. It is not even prose run mad.[1] Monroe is much at a loss what course to take in consequence of the wicked assault on him by Mr. A. and I am as much so as to the advice that ought to be given him. It deserves consideration perhaps that if the least occasion be furnished for reviving Governmental attention to him, the spirit of party revenge may be wreaked thro' the forms of the Constitution. A majority in the H. of R. & ⅔ of the Senate seem to be ripe for everything. A temperate & dignified animadversion on the proceeding, published with his name, as an appeal to the candor & justice of his fellow Citizens agst the wanton & unmanly treatment, might perhaps be of use. But it w^d be difficult to execute it in a manner to do justice to himself, & inflict it on his adversary, without clashing with the temper of the moment. Hoping for the pleasure of congratulating you soon, on your release from your painful situation, I close with the most affectionate assurance that I am yours[2]

[1] "I enclose for your perusal a poem on the alien bill, written by Mr. Marshall."—Jefferson to Madison, May 31, 1798, *Writings* (Ford), vii., 262.

[2] Congress adjourned July 16 to December 1. The alien bill was

RESOLUTIONS OF 1798.[1]

IN THE HOUSE OF DELEGATES
Friday, December 21, 1798

[1.] *Resolved*, That the General Assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States, and the Constitution of this State, against every aggression either foreign or domestic; and that they will support the Government of the United States in all measures warranted by the former.

[2.] That this Assembly most solemnly declares a warm attachment to the Union of the States, to maintain which it pledges all its powers; and that, for this end, it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that Union, because a faithful observance of them can alone secure its existence and the public happiness.

[3.] That this Assembly doth explicitly and peremptorily declare that it views the powers of the Federal Government as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact; as no further valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers not granted by the said compact, the States, who are parties thereto, have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them.

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passed July 6, the sedition July 14, the naturalization bill was approved June 18. Jefferson went back to Monticello immediately after the adjournment, and he and Madison had few occasions for writing to each other during that summer.

[1] Madison intended to make his retirement from public life permanent and was busy with his farm and building additions to his house when the crisis drew him into public activity. Jefferson, George

[4.] That the General Assembly doth also express its deep regret, that a spirit has in sundry instances been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which, having been copied from the very limited grant of powers in the former Articles of Confederation, were the less liable to be misconstrued) so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases; and so as to consolidate the States, by degrees, into one sovereignty, the obvious tendency and inevitable result of which would be to transform the present republican system of the United States into an absolute, or, at best, a mixed monarchy.

[5.] That the General Assembly doth particularly protest

Nicholas, and himself consulted and agreed to concerted action on the part of Kentucky and Virginia against the alien and sedition laws, but Madison never saw the Kentucky resolutions until they were published. See his defence of both the Kentucky and Virginia resolutions against the charge that they embodied the principle of nullification, *post, 1835–'36;* also Warfield's *Kentucky Resolutions of 1798.* Madison gave the Virginia resolutions to John Taylor of Caroline to introduce, and but one alteration was made in the original draft. Paragraph 4, as Madison prepared it, was ". . . as it does hereby declare, that the acts aforesaid, are unconstitutional, *null, void and of no effect,*" the words in italics being struck out as unnecessary repetition. Nevertheless, Madison was not perfectly easy in his mind over the question of whether the legislature was really the proper body for making the protest, as the following letter shows:

TO THOMAS JEFFERSON.

Decr 29, 1798.

DEAR SIR,—I inclose a draught on Genl Moylan, out of which you will be pleased to pay yourself the price of the Nails, £48-11. 3*d.*, Va. Cy to let Barnes have as much as will discharge the balance I owe him, & to let what may remain lie till I write to you again.

The P's speech corresponds pretty much with the idea of it which was preconceived. It is the old song with no other variation of the tune than the spirit of the moment was thought to exact. It is evi-

against the palpable and alarming infractions of the Constitution in the two late cases of the "Alien and Sedition Acts," passed at the last session of Congress; the first of which exercises a power nowhere delegated to the Federal Government and which, by uniting legislative and judicial powers to those of [the] executive, subvert the general principles of free government, as well as the particular organization and positive provisions of the Federal Constitution; and the other of which acts exercises, in like manner, a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto,—a power which more than any other, ought to produce universal alarm, because it is levelled against the right of freely examining public characters and measures, and of free communication among

dent also that he rises in his pitch as the ecchoes of the S. & H. of R. embolden him, & particularly that he seizes with avidity that of the latter flattering his vigilance & firmness agst. illusory attempts on him, without noticing, as he was equally invited, the allusion to his pacific professions. The Senate as usual perform their part with alacrity in counteracting peace by dextrous provocations to the pride & irritability of the French Govt. It is pretty clear that their answer was cooked in the same shop with the speech.[1] The of the former calculated to impose on the public mind here, & the virulence of the latter still more calculated to draw from France the war, which cannot be safely declared on this side, taste strongly of the genius of that subtle partizan of England who has contributed so much to the public misfortunes. It is not difficult to see how A. could be made a puppet thro the instrumentality of creatures around him, nor how the Senate could be managed by similar artifice.

I have not seen the Result of the discussions at Richmond on the alien & sedition laws. It is to be feared their zeal may forget some considerations which ought to temper their proceedings. Have you ever considered thoroughly the distinction between the power of the *State* & that of the *Legislature*, on questions relating to the federal pact. On the supposition that the former is clearly the ultimate Judge of infractions, it does not follow that the

[1] The following paragraph was omitted in the Congressional Edition of Madison's Works.

the people thereon, which has ever been justly deemed the only effectual guardian of every other right.

[6.] That this State having by its Convention which ratified the Federal Constitution expressly declared that, among other essential rights, "the liberty of conscience and of the press cannot be cancelled, abridged, restrained or modified by any authority of the United States," and from its extreme anxiety to guard these rights from every possible attack of sophistry or ambition, having, with other States, recommended an amendment for that purpose, which amendment was in due time annexed to the Constitution,—it would mark a reproachful inconsistency and criminal degeneracy, if an indifference were now shown to the palpable violation of one of the rights thus

latter is the legitimate organ especially as a Convention was the organ by which the compact was made. This was a reason of great weight for using general expressions that would leave to other States a choice of all the modes possible of concurring in the substance, and would shield the Genl Assembly agst the charge of Usurpation in the very act of protesting agst the usurpations of Congress.[1] I have not forgotten my promise of McGeehee's prices, but cd not conveniently copy them for the present mail.—*Mad. MSS.*

TO THOMAS JEFFERSON.

Feby. 8, 1799.

DEAR SIR

I did not receive your last favor of the 16th Ult° till the mail after it was due, with the further delay of its coming by the way of Charlottesville. The last mail brought me not a single Newspaper, tho' it was before in arrears. That there is foul play with them I have no doubt. When it really happens that the entire Mass cannot be conveyed, I suspect that the favorite papers are selected, and the others laid by; and that when there is no real difficulty the pretext makes room for the same partiality. The idea of publishing the Debates of the Convention ought to be well weighed before the expediency of it, in a public as well as personal view be decided on. Besides the

[1] The Virginia plan provided for "Conventions under appointment of the people to ratify the new Constitution," and Madison said in the debate in the convention that he thought the provision essential. (*Ante*, Vol. III., 94; also IV., 39, 45, 147, 164, 226, 344, 415, 418, 447.)

declared and secured, and to the establishment of a precedent which may be fatal to the other.

[7.] That the good people of this Commonwealth, having ever felt and continuing to feel the most sincere affection for their brethren of the other States, the truest anxiety for establishing and perpetuating the union of all and the most scrupulous fidelity to that Constitution, which is the pledge of mutual friendship, and the instrument of mutual happiness, the General Assembly doth solemnly appeal to the like disposi-

intimate connection between them the whole volume ought to be examined with an eye to the use of which every part is susceptible. In the Despotism at present exercised over the rules of construction, and [illegible] reports of the proceedings that would perhaps be made out & mustered for the occasion, it is a problem what turn might be given to the impression on the public mind. But I shall be better able to form & explain my opinion by the time, which now approaches when I shall have the pleasure of seeing you. And you will have the advantage of looking into the sheets attentively before you finally make up your own. I have had a glance at Gerry's communications & P.s Report on it. It is impossible for any man of candor not to see in the former an anxious desire on the part of France for accommodation, mixed with the feelings which Gerry satisfactorily explains. The latter a narrow understanding and a most malignant heart. Taken, however, in combination with preceding transactions, it is a link that fits the chain. The P could not do less in his speech than allow France an option of peace, nor his Minister do more than to insult & exasperate her if possible, into a refusal of it.

Inclosed is a letter to Barnes with two orders which I hope will suffice both for you & him. Should there be any deficit I can now make it up here on your return where possibly it may be more convenient for you to receive it. I inclose also a few more observations which are submitted to your discretion, under the usual reservation. They were sketched prior to the arrival of P's Report, to which they may appear to have reference; or they might have assumed still more of that aspect. The impression of your Seals have not been very distinct, but there has been no other suspicious circumstance attending them. I put into the letter to Barnes, the last of them that you may judge yourself of the appearance. If you find it not inconvenient in your strolls to buy me a cheap diamond [for cutting glass] & bring it with you, I shall be obliged to you to take that trouble. An indifferent one which I now have lost, and wish to replace it.—*Mad. MSS.*

tions of the other States, in confidence that they will concur with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken by each for co-operating with this State, in maintaining unimpaired the authorities, rights, and liberties reserved to the States respectively, or to the people.

[8.] That the Governor be desired to transmit a copy of the foregoing resolutions to the Executive authority of each of the other States, with a request that the same may be communicated to the Legislature thereof; and that a copy be furnished to each of the Senators and Representatives representing this State in the Congress of the United States.

Attest: JOHN STEWART.

1798, December 24. Agreed to by the Senate.

H. BROOKE.

A true copy from the original deposited in the office of the General Assembly.

JOHN STEWART, *Keeper of Rolls.*

RESOLUTIONS OF 1799.

IN THE HOUSE OF DELEGATES,
FRIDAY, January 4, 1799.

Resolved, That the General Assembly of Virginia will co-operate with the authorities of the United States in maintaining the independence, Union, and Constitution thereof, against the hostilities or intrigues of all foreign Powers whatsoever; and that although differences of opinion do exist in relation to internal and domestic measures, yet a charge that there is a party in this Commonwealth under the influence of any foreign Power is unfounded and calumnious.

Resolved, That the General Assemb ly do, and will always, behold with indignation, depredations on our commerce, insults on our citizens, impressments of our seamen, or any other injuries committed on the people or Government of the United States by foreign nations.

Resolved, Nevertheless, that our security from invasion and the force of our militia render a standing army unnecessary; that the policy of the United States forbids a war of aggression; that our whole reliance ought to be on ourselves; and, therefore, that while we will repel invasion at every hazard, we shall deplore and deprecate the evils of war for any other cause.

Resolved, That a copy of the foregoing resolutions be sent to each of the Senators and Representatives of this State in Congress.

Attest: JOHN STEWART, C. H. D.

1799, January 10th. Agreed to by the Senate.

H. BROOKE, C. S.

A true copy of the original deposited in the office of the General Assembly.

JOHN STEWART, *Keeper of Rolls.*

ADDRESS OF THE GENERAL ASSEMBLY TO THE PEOPLE OF THE COMMONWEALTH OF VIRGINIA.

FELLOW-CITIZENS,—Unwilling to shrink from our representative responsibility, conscious of the purity of our motives, but acknowledging your right to supervise our conduct, we invite your serious attention to the emergency which dictated the subjoined resolutions. Whilst we disdain to alarm you by ill-founded jealousies, we recommend an investigation, guided by the coolness of wisdom, and a decision bottomed on firmness but tempered with moderation.

It would be perfidious in those entrusted with the guardianship of the State sovereignty, and acting under the solemn obligation of the following oath, "I do swear that I will support the Constitution of the United States," not to warn you of encroachments which, though clothed with the pretext of necessity, or disguised by arguments of expediency, may yet establish precedents which may ultimately devote a generous and unsuspicious people to all the consequences of usurped power.

Encroachments springing from a government whose organization can not be maintained without the co-operation of the

States, furnish the strongest excitements upon the State Legislatures to watchfulness, and impose upon them the strongest obligation to preserve unimpaired the line of partition.

The acquiescence of the States under infractions of the federal compact, would either beget a speedy consolidation, by precipitating the State governments into impotency and contempt; or prepare the way for a revolution, by a repetition of these infractions, until the people are roused to appear in the majesty of their strength. It is to avoid these calamities that we exhibit to the people the momentous question, whether the Constitution of the United States shall yield to a construction which defies every restraint and overwhelms the best hopes of republicanism.

Exhortations to disregard domestic usurpation, until foreign danger shall have passed, is an artifice which may be forever used; because the possessors of power, who are the advocates for its extension, can ever create national embarrassments, to be successively employed to soothe the people into sleep, whilst that power is swelling, silently, secretly, and fatally. Of the same character are insinuations of a foreign influence, which seize upon a laudable enthusiasm against danger from abroad, and distort it by an unnatural application, so as to blind your eyes against danger at home.

The sedition act presents a scene which was never expected by the early friends of the Constitution. It was then admitted that the State sovereignties were only diminished by powers specifically enumerated, or necessary to carry the specified powers into effect. Now, Federal authority is deduced from implication; and from the existence of State law, it is inferred that Congress possess a similar power of legislation; whence Congress will be endowed with a power of legislation in all cases whatsoever, and the States will be stripped of every right reserved, by the concurrent claims of a paramount Legislature.

The sedition act is the offspring of these tremendous pretensions, which inflict a death-wound on the sovereignty of the States.

For the honor of American understanding, we will not believe that the people have been allured into the adoption of the Constitution by an affectation of defining powers, whilst the *preamble* would admit a construction which would erect the will of Congress into a power paramount in all cases, and therefore limited in none. On the contrary, it is evident that the objects for which the Constitution was formed were deemed attainable only by a particular enumeration and specification of each power granted to the Federal Government; reserving all others to the people, or to the States. And yet it is in vain we search for any specified power embracing the right of legislation against the freedom of the press.

Had the States been despoiled of their sovereignty by the generality of the preamble, and had the Federal Government been endowed with whatever they should judge to be instrumental towards union, justice, tranquillity, common defence, general welfare, and the preservation of liberty, nothing could have been more frivolous than an enumeration of powers.

It is vicious in the extreme to calumniate meritorious public servants; but it is both artful and vicious to arouse the public indignation against calumny in order to conceal usurpation. Calumny is forbidden by the laws, usurpation by the Constitution. Calumny injures individuals, usurpation, States. Calumny may be redressed by the common judicatures; usurpation can only be controlled by the act of society. Ought *usurpation*, which is most mischievous, to be rendered less hateful by *calumny*, which, though injurious, is in a degree less pernicious? But the laws for the correction of calumny were not defective. Every libellous writing or expression might receive its punishment in the State courts, from juries summoned by an officer, who does not receive his appointment from the President, and is under no influence to court the pleasure of Government, whether it injured public officers or private citizens. Nor is there any distinction in the Constitution empowering Congress exclusively to punish calumny directed against an officer of the General Government; so that

a construction assuming the power of protecting the reputation of a citizen officer will extend to the case of any other citizen, and open to Congress a right of legislation in every conceivable case which can arise between individuals.

In answer to this, it is urged that every Government possesses an inherent power of self-preservation, entitling it to do whatever it shall judge necessary for that purpose.

This is a repetition of the doctrine of implication and expediency in different language, and admits of a similar and decisive answer, namely, that as the powers of Congress are defined, powers inherent, implied, or expedient, are obviously the creatures of ambition; because the care expended in defining powers would otherwise have been superfluous. Powers extracted from such sources will be indefinitely multipled by the aid of armies and patronage, which, with the impossibility of controlling them by any demarcation, would presently terminate reasoning, and ultimately swallow up the State sovereignties.

So insatiable is a love of power that it has resorted to a distinction between the freedom and licentiousness of the press for the purpose of converting the third amendment of the Constitution, which was dictated by the most lively anxiety to preserve that freedom, into an instrument for abridging it. Thus usurpation even justifies itself by a precaution against usurpation; and thus an amendment universally designed to quiet every fear is adduced as the source of an act which has produced general terror and alarm.

The distinction between liberty and licentiousness is still a repetition of the Protean doctrine of implication, which is ever ready to work its ends by varying its shape. By its help, the judge as to what is licentious may escape through any constitutional restriction. Under it men of a particular religious opinion might be excluded from office, because such exclusion would not amount to an establishment of religion, and because it might be said that their opinions are licentious. And under it Congress might denominate a religion to be heretical and

licentious, and proceed to its suppression. Remember that precedents once established are so much positive power; and that the nation which reposes on the pillow of political confidence, will sooner or later end its political existence in a deadly lethargy. Remember, also, that it is to the press mankind are indebted for having dispelled the clouds which long encompassed religion, for disclosing her geniune lustre, and disseminating her salutary doctrines.

The sophistry of a distinction between the liberty and the licentiousness of the press is so forcibly exposed in a late memorial from our late envoys to the Minister of the French Republic, that we here present it to you in their own words:

"The genius of the Constitution, and the opinion of the people of the United States, cannot be overruled by those who administer the Government. Among those principles deemed sacred in America, among those sacred rights considered as forming the bulwark of their liberty, which the Government contemplates with awful reverence and would approach only with the most cautious circumspection, there is no one of which the importance is more deeply impressed on the public mind than the liberty of the press. That this *liberty* is often carried to excess; that it has sometimes degenerated into *licentiousness*, is seen and lamented, *but the remedy has not yet been discovered. Perhaps it is an evil inseparable from the good with which it is allied; perhaps it is a shoot which cannot be stripped from the stalk without wounding vitally the plant from which it is torn. However desirable those measures might be which might correct without enslaving the press, they have never yet been devised in America.* No regulations exist which enable the Government to suppress whatever calumnies or invectives any individual may choose to offer to the public eye, or to punish such calumnies and invectives otherwise than by a legal prosecution in courts which are alike open to all who consider themselves as injured."

As if we were bound to look for security from the personal probity of Congress amidst the frailties of man, and not from

the barriers of the Constitution, it has been urged that the accused under the sedition act is allowed to prove the truth of the charge. This argument will not for a moment disguise the unconstitutionality of the act, if it be recollected that opinions as well as facts are made punishable, and that the truth of an opinion is not susceptible of proof. By subjecting the truth of opinion to the regulation, fine, and imprisonment, to be inflicted by those who are of a different opinion, the free range of the human mind is injuriously restrained. The sacred obligations of religion flow from the due exercise of opinion, in the solemn discharge of which man is accountable to his God alone; yet, under this precedent the truth of religion itself may be ascertained, and its pretended licentiousness punished by a jury of a different creed from that held by the person accused. This law, then, commits the double sacrilege of arresting reason in her progress towards perfection, and of placing in a state of danger the free exercise of religious opinions. But where does the Constitution allow Congress to create crimes and inflict punishment, provided they allow the accused to exhibit evidence in his defense? This doctrine, united with the assertion, that sedition is a common law offence, and therefore within the correcting power of Congress, opens at once the hideous volumes of penal law, and turns loose upon us the utmost invention of insatiable malice and ambition, which, in all ages, have debauched morals, depressed liberty, shackled religion, supported despotism, and deluged the scaffold with blood.

All the preceding arguments, arising from a deficiency of constitutional power in Congress, apply to the alien act; and this act is liable to other objections peculiar to itself. If a suspicion that aliens are dangerous constitute the justification of that power exercised over them by Congress, then a similar suspicion will justify the exercise of a similar power over natives; because there is nothing in the Constitution distinguishing between the power of a State to permit the residence of natives and of aliens. It is, therefore, a right originally

possessed, and never surrendered, by the respective States, and which is rendered dear and valuable to Virginia, because it is assailed through the bosom of the Constitution, and because her peculiar situation renders the easy admission of artisans and laborers an interest of vast importance.

But this bill contains other features, still more alarming and dangerous. It dispenses with the trial by jury; it violates the judicial system; it confounds legislative, executive, and judicial powers; it punishes without trial; and it bestows upon the President despotic power over a numerous class of men. Are such measures consistent with our constitutional principles? And will an accumulation of power so extensive in the hands of the Executive, over aliens, secure to natives the blessings of republican liberty?

If measures can mould governments, and if an uncontrolled power of construction is surrendered to those who administer them, their progress may be easily foreseen, and their end easily foretold. A lover of monarchy, who opens the treasures of corruption by distributing emolument among devoted partisans, may at the same time be approaching his object and deluding the people with professions of republicanism. He may confound monarchy and republicanism, by the art of definition. He may varnish over the dexterity which ambition never fails to display, with the pliancy of language, the seduction of expediency, or the prejudices of the times; and he may come at length to avow that so extensive a territory as that of the United States can only be governed by the energies of monarchy; that it cannot be defended, except by standing armies; and that it cannot be united except by consolidation.

Measures have already been adopted which may lead to these consequences. They consist—

In fiscal systems and arrangements, which keep a host of commercial and wealthy individuals imbodied, and obedient to the mandates of the treasury.

In armies and navies, which will, on the one hand, enlist the

tendency of man to pay homage to his fellow-creature who can feed or honor him; and on the other, employ the principle of fear, by punishing imaginary insurrections, under the pretext of preventive justice.

In the extensive establishment of a volunteer militia, rallied together by a political creed, armed and officered by executive power, so as to deprive the States of their constitutional right to appoint militia officers, and to place the great bulk of the people in a defenceless situation.

In swarms of officers, civil and military, who can inculcate political tenets tending to consolidation and monarchy both by indulgencies and severities; and can act as spies over the free exercise of human reason.

In destroying, by the sedition act, the responsibility of public servants and public measures to the people, thus retrograding towards the exploded doctrine "that the administrators of the Government are the masters, and not the servants, of the people," and exposing America, which acquired the honour of taking the lead among nations towards perfecting political principles, to the disgrace of returning first to ancient ignorance and barbarism.

In exercising a power of depriving a portion of the people of that representation in Congress bestowed by the Constitution.

In the adoration and efforts of some known to be rooted in enmity to Republican Government, applauding and supporting measures by every contrivance calculated to take advantage of the public confidence, which is allowed to be ingenious, but will be fatally injurious.

In transferring to the Executive important legislative powers; particularly the power of raising armies, and borrowing money without limitation of interest.

In restraining the freedom of the press, and investing the Executive with legislative, executive, and judicial powers, over a numerous body of men.

And, that we may shorten the catalogue, in establishing, by successive precedents, such a mode of construing the

Constitution as will rapidly remove every restraint upon Federal power.

Let history be consulted; let the man of experience reflect: nay, let the artificers of monarchy be asked what further materials they can need for building up their favorite system.

These are solemn but painful truths; and yet we recommend it to you not to forget the possibility of danger from without, although danger threatens us from within. Usurpation is indeed dreadful; but against foreign invasion, if that should happen, let us rise with hearts and hands united, and repel the attack with the zeal of freemen who will strengthen their title to examine and correct domestic measures, by having defended their country against foreign aggression.

Pledged as we are, fellow-citizens, to these sacred engagements, we yet humbly and fervently implore the Almighty Disposer of events to avert from our land war and usurpation, the scourges of mankind; to permit our fields to be cultivated in peace; to instil into nations the love of friendly intercourse; to suffer our youth to be educated in virtue, and to preserve our morality from the pollution invariably incident to habits of war; to prevent the laborer and husbandman from being harassed by taxes and imposts; to remove from ambition the means of disturbing the commonwealth; to annihilate all pretexts for power afforded by war; to maintain the Constitution; and to bless our nation with tranquillity, under whose benign influence we may reach the summit of happiness and glory, to which we are destined by *nature* and *nature's God*.

Attest: JOHN STEWART, C. H. D.

1799, January 23. Agreed to by the Senate.

H. BROOKE, C. S.

A true copy from the original deposited in the office of the General Assembly.

JOHN STEWART, *Keeper of Rolls*.

REPORT ON THE RESOLUTIONS.[1]

HOUSE OF DELEGATES, Session of 1799-1800.

Report of the Committee to whom were referred the Communications of various States, relative to the Resolutions of the last General Assembly of this State, concerning the Alien and Sedition Laws.

Whatever room might be found in the proceedings of some of the States, who have disapproved of the resolutions of the General Assembly of this Commonwealth, passed on the 21st day of December, 1798, for painful remarks on the spirit and manner of those proceedings, it appears to the committee most consistent with the duty, as well as dignity, of the General Assembly, to hasten an oblivion of every circumstance

[1] Under date of Philadelphia, February 7, 1799, Walter Jones, John Nicholas, Carter H. Harrison, Joseph Eggleston, Abraham B. Venable, and Richard Brent, Republican members of Congress from Virginia, wrote Madison:

"While the sentiments we entertain of your Talents, your experience & your Probity, have made your absence from the public councils, a subject of our very serious regret, our Confidence in the justness of your Motives assures us, that you stand completely justified.

"At the same time the Growth & conduct of the executive Party, since your retirement, have continued more & more to render the Inaction of republican Principles & Talents deplorable & injurious.

"Our extreme Solicitude to give energy to those virtues, in every possible direction, has urged us jointly to address you. We hope that obstacles of your serving in the State legislature, may be less imperious, than those by which you were withdrawn from that of the Union—it is quite needless to point out *to you*, the powerful agency of *wise* and *firm* State measures in preserving the general government within the just Limits of the Constitution, which from the nature of things, it must be ever struggling to transcend; but our present position enables us to discover, perhaps more clearly, the perseverance & success of those struggles.

"We should be wanting in the Social Duties we profess, if we declined to invite you with earnestness, to take part in the councils of your State.

"Pretensions founded as yours are, can scarcely fail of success—

which might be construed into a diminution of mutual respect, confidence, and affection among the members of the Union.

The committee have deemed it a more useful task to revise, with a critical eye, the resolutions which have met with this disapprobation; to examine fully the several objections and arguments which have appeared against them; and to inquire whether there be any errors of fact, of principle, or of reasoning, which the candor of the General Assembly ought to acknowledge and correct.

The first of the resolutions is in the words following:

"*Resolved*, That the General Assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States and the Constitution of this State against every aggression, either foreign or domestic,

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our utmost aid, if it shall be in any way applicable, and our ardent wishes will attend you in the experiment."—*Mad. MSS.*

Accordingly he consented to go to the House of Delegates and was elected in the autumn of 1799. Delaware, Rhode Island, Massachusetts, New York, Connecticut, New Hampshire, and Vermont having replied to the resolutions in dissent, Madison wrote the report.

TO THOMAS JEFFERSON.

RICHMOND, Dec[r] 29, 1799

DEAR SIR,—

My promise to write to you before your leaving Albemarle was defeated by a dysenteric attack, which laid me up for about a week, and which left me in a state of debility not yet thoroughly removed. My recovery has been much retarded by the job of preparing a vindication of the Resolutions of last Session ag[st] the replies of the other States, and the sophistries from other quarters. The Committee made their report a few days ago, which is now in the press and stands the order of the day for thursday next. A set of Resolutions proposed by Mr. Giles, instructing the Senators to urge the repeal of the uncons[t] acts, the disbanding of the army, and a proper arrangement of the militia, are also in the press, and stand the order of the same day for the same Committee. It is supposed that both these papers, the latter perhaps with some modifications, will go through the H. of Delegates. The Senate, owing to inattention & casualties, is so composed as to render the event there not a little uncertain. If an election, to fill the

and that they will support the Government of the United States in all measures warranted by the former."

No unfavorable comment can have been made on the sentiments here expressed. To maintain and defend the Constitution of the United States, and of their own State, against every aggression, both foreign and domestic, and to support the Government of the United States in all measures warranted by their Constitution, are duties which the General Assembly ought always to feel, and to which, on such an occasion, it was evidently proper to express their sincere and firm adherence.

In their next resolution—

"The General Assembly most solemnly declares a warm attachment to the Union of the States, to maintain which it

vacancy of Mr. H. Nelson who lately resigned, should send Mr. Andrews in preference to his competitor Mr. Saunders, I am told that the parties will be precisely in equilibrio, excepting only one or two whom circumstances now & then on particular questions, transfer from the wrong to the right side. It is hoped that this contingent fund of votes, will be applicable to the Vindication. On other important questions, there is much less expectation from it. There is a report here that the Legislature of N. Carolina now in session, have voted the Resolutions of Virginia under their table. The report is highly improbable, and I do not believe it. But it is impossible to calculate the progress of delusion, especially in a State where it is said to be under systematic management, and where there is so little either of system or exertion opposed to it. We had a narrow escape yesterday from an increase of pay to the members, which would have been particularly unseasonable & injurious both within & without the State. It was rejected on the third reading by a small majority; and was so much a favorite, with the distant members particularly, that I fear it has left them in rather an ill humour.

The late course of foreign events has probably made the same impression everywhere. If it should not render France less anxious to meet our advances, its good effects will be felt every way. If our Executive & their Envoys be sincere in their pacific objects, it will perhaps supply by their increased anxiety what may be lost on the other side. But there can be little confidence after what has been seen, that the negociation would be influenced by this temper of the Envoys, instead of that which perverted it in the hands of their predecessors. This possibility of failure in the diplomatic experiment,

pledges all its powers; and that for this end it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that Union, because a faithful observance of them can alone secure its existence, and the public happiness."

The observation just made is equally applicable to this solemn declaration of warm attachment to the Union, and this solemn pledge to maintain it; nor can any question arise among enlightened friends of the Union, as to the duty of watching over and opposing every infraction of those principles which constitute its basis, and a faithful observance of which can alone secure its existence, and the public happiness thereon depending.

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will present the most specious obstacle to an immediate discharge of the army. It would be useful for the Assembly to know how this matter is viewed where you are. Mr. Dawson will be good eno' to write me on the subject. I intended to have written to him by this mail; but my time has been taken from me till the closing of the mail is approaching.—*Mad. MSS.*

TO THOMAS JEFFERSON.

RICHMOND, Jan^{y} 4, 1800

DEAR SIR,—

My last covered a copy of the Report on the Resolutions of last year. I now inclose a copy of certain resolutions moved by Mr. Giles, to which he means to add an instruction on the subject of the intercourse law which has been so injurious to the price of Tob^{o}. It is not improbable that the Resolutions when taken up, may undergo some mollifications, in the spirit and air of them. The Report has been under debate for two days. The attacks on it have turned chiefly on an alleged inconsistency between the comment now made and the arguments of the last session, and on the right of the Legislature to interfere in any manner with denunciations of the measures of the Gen^{l} Gov^{t}. The first attack has been parried by an amendment admitting that different constructions may have been entertained of the term "States" as "parties" &c but that the sense relied on in the report must be concurred in by all. It is in fact concurred in by both parties. On examination of the Debates of the last session, it appears that both were equally inaccurate & inconsistent in the grounds formerly taken by them. The attack on the right of the

The third resolution is in the words following:

"That this Assembly doth explicitly and peremptorily declare, that it views the powers of the Federal Government as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact—as no further valid than they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them."

Legislature to interfere by declaration of opinion will form a material point in the discussion. It is not yet known how far the opposition to the Report will be carried into detail The part relating to the Common law it is said will certainly be combated. You will perceive from this view of the matter, that it is not possible to guess how long, we shall be employed on it. There will in the event be a considerable majority for the Report in the House of Delegates, and a pretty sure one in the Senate. Can you send me a copy of Priestly's letters last published.—*Mad. MSS.*

TO THOMAS JEFFERSON.

Jany. 9, 1800.

DEAR SIR,—The question on the Report printed, was decided by 60 for & 40 agst it, the day before yesterday, after a debate of five days. Yesterday & to-day have been spent on Mr. Giles' propositions, which with some softenings will probably pass, by nearly the same vote. The Senate is in rather a better state than was expected. The Debate turned almost wholly on the right of the Legislature to protest. The Constitutionality of the Alien & Sedition Acts & of the C. Law was waived. It was said that the last question would be discussed under Mr. Giles' propositions; but as yet nothing has been urged in its favour It is probable however that the intention has not been laid aside. I thank you for the pamphlets.—*Mad. MSS.*

TO THOMAS JEFFERSON.

RICHMOND, Jany. 12, 1800.

DEAR SIR,—My last informed you of the result of the debates on the justifying Report of the Select Committee. I am now able to add

On this resolution the committee have bestowed all the attention which its importance merits. They have scanned it not merely with a strict, but with a severe eye; and they feel confidence in pronouncing that, in its just and fair construction, it is unexceptionably true in its several positions, as well as constitutional and conclusive in its inferences.

The resolution declares, *first*, that "it views the powers of the Federal Government as resulting from the compact to which the States are parties"; in other words, that the Federal powers are derived from the Constitution; and that the Constitution is a compact to which the States are parties.

Clear as the position must seem, that the Federal powers are derived from the Constitution, and from that alone, the committee are not unapprized of a late doctrine which opens another source of Federal powers not less extensive and im-

that of Mr. Giles's resolutions. The question on the whole was decided in the affirmative by a little upwards of a hundred against less than fifty. The vote was rather stronger on some of the particular resolutions, for example the instruction for disbanding the army. The alien sedition & Tobacco instructions passed without a count or a division. That relating to the common law, passed unanimously with an amendment qualifying it in the words of the paragraph in the Justifying Report under which certain defined parts of the C. L. are admitted to be the law of the U. S. This amendment was moved by the minority on the idea that it covers the doctrine they contend for. On our side it is considered as a guarded exposition of the powers expressed in the Const^{n} and those necessary & proper to carry them into execution. I am not able to say in what manner they misconstrue the definition, unless they apply the term "adopt" to the "Court" which would be equally absurd & unconstitutional. The Judges themselves will hardly contend that they can *adopt* a law, that is, make that law which was before not law. The difference in the majority on the Report & the resolutions, was occasioned chiefly by the pledge given agst the former by the members who voted agst the Resolutions of last year. The resolutions also underwent some improvements, which reconciled many to them who were not satisfied with their first tone & form. It is understood that the present assembly is rather stronger on the republican side than the last one: and that a few favorable changes have taken place in the course of the session. It is proposed to introduce to-morrow a bill for a general ticket in chusing the next

portant than it is new and unexpected. The examination of this doctrine will be most conveniently connected with a review of a succeeding resolution. The committee satisfy themselves here with briefly remarking, that in all the contemporary discussions and comments which the Constitution underwent, it was constantly justified and recommended on the ground that the powers not given to the Government were withheld from it; and that if any doubt could have existed on this subject, under the original text of the Constitution, it is removed, as far as words could remove it, by the 12th amendment, now a part of the Constitution, which expressly declares "that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Electors. I expect to leave this in a week; so that your subsequent favors will find me in Orange.

Shew this to Mr. Dawson.—*Mad. MSS*

TO THOMAS JEFFERSON

RICHMOND Jan^{y} 18, 1800.

DEAR SIR,—Since my last the Senate have agreed to the *Report* & the *Resolution* by 15 to 6. To the latter, they made an amend to the definition of the portion of C. L. in force in the U. S. by inserting the words "by Congress" after the word "adopted," in order to repel the misconstruction which led the minority to concur in that particular resolution as it passed the H. of D. The amend^{t} was agreed to by 82 to 40. The plan of a Gen^{l} Ticket was so novel that a great n^{o} who wished it shrunk from the vote, and others apprehending that their Const^{ts} would be still more startled at it voted agst it, so that it passed by a majority of 5 votes only. The event in the Senate is rather doubtful; tho' it is expected to get thro'. As the avowed object of it is to give Virg^{a}. *fair play*, I think if passed into a law, it will with proper explanations become popular. I expect to get away ab^{t} the middle of the week The Assembly will rise perhaps at the end of it; tho' possibly not so soon. I forgot to tell you that a renewed effort to raise the pay of the members to 3 d^{rs} has succeeded; a measure wrong in principle, and which will be hurtful in its operation. I have desired Barnes to pay you a balance in his hands, out of which you will please to pay yourself the balance due to your Nailory.—*Mad. MSS.*

The other position involved in this branch of the resolution, namely, "that the States are parties to the Constitution" or compact, is, in the judgment of the committee, equally free from objection. It is indeed true that the term "States" is sometimes used in a vague sense, and sometimes in different senses, according to the subject to which it is applied. Thus, it sometimes means the separate sections of territory occupied by the political societies within each; sometimes the particular governments established by those societies; sometimes those societies as organized into those particular governments; and, lastly, it means the people composing those political societies, in their highest sovereign capacity. Although it might be wished that the perfection of language admitted less diversity in the signification of the same words, yet little inconvenience is produced by it where the true sense can be collected with certainty from the different applications. In the present instance, whatever different construction of the term "States," in the resolution, may have been entertained, all will at least concur in that last mentioned; because in that sense the Constitution was submitted to the "States"; in that sense the "States" ratified it; and in that sense of the term "States" they are consequently parties to the compact from which the powers of the Federal Government result.

The next position is, that the General Assembly views the powers of the Federal Government "as limited by the plain sense and intention of the instrument constituting that compact," and "as no farther valid than they are authorized by the grants therein enumerated." It does not seem possible that any just objection can lie against either of these causes. The first amounts merely to a declaration that the compact ought to have the interpretation plainly intended by the parties to it; the other, to a declaration that it ought to have the execution and effect intended by them. If the powers granted be valid, it is solely because they are granted; and if the granted powers are valid because granted, all other powers not granted must not be valid.

The resolution having taken this view of the Federal compact, proceeds to infer "that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them."

It appears to your committee to be a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts, that where resort can be had to no tribunal superior to the authority of the parties, the parties themselves must be the rightful judges, in the last resort, whether the bargain made has been pursued or violated. The Constitution of the United States was formed by the sanction of the States, given by each in its sovereign capacity. It adds to the stability and dignity, as well as to the authority of the Constitution, that it rests on this legitimate and solid foundation. The States then, being the parties to the constitutional compact, and in their sovereign capacity, it follows of necessity that there can be no tribunal above their authority to decide, in the last resort, whether the compact made by them be violated; and, consequently, that, as the parties to it, they must themselves decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition.

It does not follow, however, because the States, as sovereign parties to their constitutional compact, must ultimately decide whether it has been violated, that such a decision ought to be interposed either in a hasty manner or on doubtful and inferior occasions. Even in the case of ordinary conventions between different nations, where, by the strict rule of interpretation, a breach of a part may be deemed a breach of the whole—every part being deemed a condition of every other part, and of the whole—it is always laid down that the breach must be both wilful and material, to justify an application of

the rule. But in the case of an intimate and constitutional union, like that of the United States, it is evident that the interposition of the parties, in their sovereign capacity, can be called for by occasions only deeply essentially affecting the vital principles of their political system.

The resolution has, accordingly, guarded against any misapprehension of its object, by expressly requiring for such an interposition "the case of a *deliberate*, *palpable*, and *dangerous* breach of the Constitution by the exercise of *powers not granted* by it." It must be a case, not of a light and transient nature, but of a nature *dangerous* to the great purposes for which the Constitution was established. It must be a case, moreover, not obscure or doubtful in its construction, but plain and *palpable*. Lastly it must be a case not resulting from a partial consideration or hasty determination, but a case stamped with a final consideration and *deliberate* adherence. It is not necessary, because the resolution does not require, that the question should be discussed, how far the exercise of any particular power, ungranted by the Constitution, would justify the interposition of the parties to it. As cases might easily be stated which none would contend ought to fall within that description, cases, on the other hand, might with equal ease be stated, so flagrant and so fatal as to unite every opinion in placing them within the description.

But the resolution has done more than guard against misconstruction, by expressly referring to cases of a *deliberate*, *palpable*, and *dangerous* nature. It specifies the object of the interposition which it contemplates to be solely that of arresting the progress of the *evil* of usurpation, and of maintaining the authorities, rights, and liberties appertaining to the States as parties to the Constitution.

From this view of the resolution it would seem inconceivable that it can incur any just disapprobation from those who, laying aside all momentary impressions, and recollecting the genuine source and object of the Federal Constitution, shall candidly and accurately interpret the meaning of the General

Assembly. If the deliberate exercise of dangerous powers, palpably withheld by the Constitution, could not justify the parties to it in interposing even so far as to arrest the progress of the evil, and thereby to preserve the Constitution itself, as well as to provide for the safety of the parties to it, there would be an end to all relief from usurped power, and a direct subversion of the rights specified or recognized under all the State constitutions, as well as a plain denial of the fundamental principle on which our independence itself was declared.

But it is objected that the judicial authority is to be regarded as the sole expositor of the Constitution, in the last resort; and it may be asked for what reason the declaration by the General Assembly, supposing it to be theoretically true, could be required at the present day, and in so solemn a manner.

On this objection it might be observed, *first*, that there may be instances of usurped power, which the forms of the Constitution would never draw within the control of the judicial department; *secondly*, that if the decision of the judiciary be raised above the authority of the sovereign parties to the Constitution, the decisions of the other departments, not carried by the forms of the Constitution before the judiciary, must be equally authoritative and final with the decisions of that department. But the proper answer to the objection, is that the resolution of the General Assembly relates to those great and extraordinary cases in which all the forms of the Constitution may prove ineffectual against infractions dangerous to the essential rights of the parties to it. The resolution supposes that dangerous powers, not delegated, may not only be usurped and executed by the other departments, but that the judicial department also may exercise or sanction dangerous powers beyond the grant of the Constitution, and, consequently, that the ultimate right of the parties to the Constitution to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority as well as by another; by the judiciary as well as by the executive or the legislature.

However true, therefore, it may be that the judicial department is, in all questions submitted to it by the forms of the Constitution, to decide in the last resort, this resort must necessarily be deemed the last in relation to the authorities of the other departments of the Government; not in relation to the rights of the parties to the constitutional compact, from which the judicial as well as the other departments hold their delegated trusts. On any other hypothesis, the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with the others in usurped powers might subvert forever, and beyond the possible reach of any rightful remedy, the very Constitution which all were instituted to preserve.

The truth declared in the resolution being established, the expediency of making the declaration at the present day may safely be left to the temperate consideration and candid judgment of the American public. It will be remembered that a frequent recurrence to fundamental principles is solemnly enjoined by most of the State constitutions, and particularly by our own, as a necessary safeguard against the danger of degeneracy to which republics are liable, as well as other governments, though in a less degree than others. And a fair comparison of the political doctrines not unfrequent at the present day with those which characterized the epoch of our Revolution, and which form the basis of our republican constitutions, will best determine whether the declaratory recurrence here made to those principles ought to be viewed as unseasonable and improper, or as a vigilant discharge of an important duty. The authority of constitutions over governments, and of the sovereignty of the people over constitutions, are truths which are at all times necessary to be kept in mind, and at no time, perhaps, more necessary than at present.

The fourth resolution stands as follows:

"That the General Assembly doth also express its deep regret that a spirit has in sundry instances been manifested by the Federal Government to enlarge its powers by forced

constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases, (which, having been copied from the very limited grant of powers in the former articles of Confederation, were the less liable to be misconstrued,) so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases, and so as to consolidate the States by degrees into one sovereignty, the obvious tendency and inevitable result of which would be to transform the present republican system of the United States into an absolute, or at best a mixed, monarchy."

The *first* question here to be considered is, whether a spirit has, in sundry instances, been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter.

The General Assembly having declared their opinion merely by regretting, in general terms, that forced constructions for enlarging the Federal powers have taken place, it does not appear to the committee necessary to go into a specification of every instance to which the resolution may allude. The Alien and Sedition Acts being particularly named in a succeeding resolution, are of course to be understood as included n the allusion. Omitting others which have less occupied public attention, or been less extensively regarded as unconstitutional, the resolution may be presumed to refer particularly to the Bank Law, which, from the circumstances of its passage, as well as the latitude of construction on which it is founded, strikes the attention with singular force; and the Carriage Tax, distinguished also by circumstances in its history having a similar tendency. Those instances alone, if resulting from forced construction, and calculated to enlarge the powers of the Federal Government, as the committee cannot but conceive to be the case, sufficiently warrant this part of the resolution. The committee have not thought it incumbent on them to extend their attention to laws which have been objected to, rather as varying the constitutional

distribution of powers in the Federal Government, than as an absolute enlargement of them; because instances of this sort, however important in their principles and tendencies, do not appear to fall strictly within the text under review.

The other questions presenting themselves are—1. Whether indications have appeared of a design to expound certain general phrases copied from the "Articles of Confederation," so as to destroy the effect of the particular enumeration explaining and limiting their meaning. 2. Whether this exposition would by degrees consolidate the States into one sovereignty. 3. Whether the tendency and result of this consolidation would be to transform the republican system of the United States into a monarchy.

1. The general phrases here meant, must be those "of providing for the common defence and general welfare."

In the "Articles of Confederation," the phrases are used as follows, in Article VIII: "All charges of war, and all other expenses that shall be incurred *for the common defence and general welfare*, and allowed by the United States in Congress assembled, shall be defrayed out of the common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States, in Congress assembled, shall from time to time direct and appoint."

In the existing Constitution they make the following part of Section 8: "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States."

This similarity in the use of these phrases, in the two great Federal charters, might well be considered as rendering their meaning less liable to be misconstrued in the latter; because it will scarcely be said that in the former they were ever understood to be either a general grant of power, or to authorize the

requisition or application of money by the old Congress to the common defence and general welfare, except in the cases afterwards enumerated, which explained and limited their meaning; and if such was the limited meaning attached to these phrases in the very instrument revised and re-modeled by the present Constitution, it can never be supposed that, when copied into this Constitution, a different meaning ought to be attached to them.

That, notwithstanding this remarkable security against misconstruction, a design has been indicated to expound these phrases in the Constitution so as to destroy the effect of the particular enumeration of powers by which it explains and limits them, must have fallen under the observation of those who have attended to the course of public transactions. Not to multiply proofs on this subject, it will suffice to refer to the Debates of the Federal Legislature, in which arguments have on different occasions been drawn, with apparent effect, from these phrases in their indefinite meaning.

To these indications might be added, without looking further, the official Report on Manufactures, by the late Secretary of the Treasury, made on the 5th of December, 1791, and the Report of a Committee of Congress, in January, 1797, on the promotion of Agriculture. In the first of these it is expressly contended to belong "to the discretion of the National Legislature to pronounce upon the objects which concern the *general welfare*, and for which, under that description, an appropriation of money is requisite and proper. And there seems to be no room for a doubt that whatever concerns the general interests of LEARNING, of AGRICULTURE, of MANUFACTURES, and of COMMERCE, are within the sphere of the National Councils, *as far as regards an application of money.*" The latter Report assumes the same latitude of power in the national councils, and applies it to the encouragement of agriculture by means of a society to be established at the seat of Government. Although neither of these Reports may have received the sanction of a law carrying it into effect, yet, on

the other hand, the extraordinary doctrine contained in both has passed without the slightest positive mark of disapprobation from the authority to which it was addressed.

Now, whether the phrases in question be construed to authorize every measure relating to the common defence and general welfare, as contended by some—or every measure only in which there might be an application of money, as suggested by the caution of others—the effect must substantially be the same, in destroying the import and force of the particular enumeration of powers which follow these general phrases in the Constitution; for it is evident that there is not a single power whatever which may not have some reference to the common defence or the general welfare; nor a power of any magnitude, which, in its exercise, does not involve or admit an application of money. The government, therefore, which possesses power in either one or other of these extents, is a government without the limitations formed by a particular enumeration of powers; and, consequently, the meaning and effect of this particular enumeration is destroyed by the exposition given to these general phrases.

This conclusion will not be affected by an attempt to qualify the power over the "general welfare," by referring it to cases where the *general welfare* is beyond the reach of *separate* provisions by the *individual States*, and leaving to these their jurisdictions in cases to which their separate provisions may be competent; for, as the authority of the individual States must in all cases be incompetent to general regulations operating through the whole, the authority of the United States would be extended to every object relating to the general welfare which might, by any possibility, be provided for by the general authority. This qualifying construction, therefore, would have little, if any, tendency to circumscribe the power claimed under the latitude of the terms "general welfare."

The true and fair construction of this expression, both in the original and existing Federal compacts, appears to the com-

mittee too obvious to be mistaken. In both, the Congress is authorized to provide money for the common defence and *general welfare*. In both, is subjoined to this authority an enumeration of the cases to which their powers shall extend. Money cannot be applied to the *general welfare*, otherwise than by an application of it to some *particular* measure conducive to the general welfare. Whenever, therefore, money has been raised by the general authority, and is to be applied to a particular measure, a question arises whether the particular measure be within the enumerated authorities vested in Congress. If it be, the money requisite for it may be applied to it; if it be not, no such application can be made. This fair and obvious interpretation coincides with and is enforced by the clause in the Constitution which declares that "no money shall be drawn from the Treasury, but in consequence of appropriations by law." An appropriation of money to the general welfare would be deemed rather a mockery than an observance of this constitutional injunction.

2. Whether the exposition of the general phrases here combatted would not by degrees consolidate the States into one sovereignty, is a question concerning which the committee can perceive little room for difference of opinion. To consolidate the States into one sovereignty, nothing more can be wanted than to supersede their respective sovereignties in the cases reserved to them, by extending the sovereignty of the United States to all cases of the "general welfare"—that is to say, *to all cases whatever*.

3. That the obvious tendency and inevitable result of a consolidation of the States into one sovereignty, would be to transform the republican system of the United States into a monarchy, is a point which seems to have been sufficiently decided by the general sentiment of America. In almost every instance of discussion relating to the consolidation in question, its certain tendency to pave the way to monarchy seems not to have been contested. The prospect of such a consolidation has formed the only topic of controversy. It

would be unnecessary, therefore, for the committee to dwell long on the reasons which support the position of the General Assembly. It may not be improper, however, to remark two consequences evidently flowing from an extension of the Federal powers to every subject falling within the idea of the "general welfare."

One consequence must be, to enlarge the sphere of discretion allotted to the Executive Magistrate. Even within the legislative limits properly defined by the Constitution, the difficulty of accommodating legal regulations to a country so great in extent and so various in its circumstances has been much felt, and has lead to occasional investments of power in the Executive, which involve perhaps as large a portion of discretion as can be deemed consistent with the nature of the Executive trust. In proportion as the objects of legislative care might be multiplied, would the time allowed for each be diminished, and the difficulty of providing uniform and particular regulations for all be increased. From these sources would necessarily ensue a greater latitude to the agency of that department which is always in existence, and which could best mould regulations of a general nature so as to suit them to the diversity of particular situations. And it is in this latitude, as a supplement to the deficiency of the laws, that the degree of Executive prerogative materially consists.

The other consequence would be, that of an excessive augmentation of the offices, honors, and emoluments, depending on the Executive will. Add to the present legitimate stock all those of every description which a consolidation of the States would take from them and turn over to the Federal Government, and the patronage of the Executive would necessarily be as much swelled in this case as its prerogative would be in the other.

This disproportionate increase of prerogative and patronage must, evidently, either enable the Chief Magistrate of the Union, by quiet means, to secure his re-election from time to time,

and finally to regulate the succession as he might please; or, by giving so transcendent an importance to the office, would render the elections to it so violent and corrupt, that the public voice itself might call for an hereditary in place of an elective succession. Whichever of these events might follow, the transformation of the republican system of the United States into a monarchy, anticipated by the General Assembly from a consolidation of the States into one sovereignty, would be equally accomplished; and whether it would be into a mixed or an absolute monarchy might depend on too many contingencies to admit of any certain foresight.

The resolution next in order is contained in the following terms:

"That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution in the two late cases of the 'Alien and Sedition Acts,' passed at the last session of Congress; the first of which exercises a power nowhere delegated to the Federal Government, and which, by uniting legislative and judicial powers to those of executive, subverts the general principles of a free Government, as well as the particular organization and positive provisions of the Federal Constitution; and the other of which acts exercises, in like manner, a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto; a power which, more than any other, ought to produce universal alarm; because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right."

The subject of this resolution having, it is presumed, more particularly led the General Assembly into the proceedings which they communicated to the other States, and being in itself of peculiar importance, it deserves the most critical and faithful investigation, for the length of which no other apology will be necessary.

The subject divides itself into—*first*, "The Alien Act"; *secondly*, "The Sedition Act."

Of the "Alien Act," it is affirmed by the resolution—1st. That it exercises a power nowhere delegated to the Federal Government. 2d. That it unites legislative and judicial powers to those of the Executive. 3d. That this union of power subverts the general principles of free government. 4th. That it subverts the particular organization and positive provisions of the Federal Constitution.

In order to clear the way for a correct view of the first position several observations will be premised.

1. In the first place, it is to be borne in mind that it being a characteristic feature of the Federal Constitution, as it was originally ratified, and an amendment thereto having precisely declared, "That the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people"; it is incumbent in this as in every other exercise of power by the Federal Government, to prove from the Constitution that it grants the particular power exercised.

The next observation to be made is, that much confusion and fallacy have been thrown into the question by blending the two cases of *aliens, members of a hostile nation*, and *aliens, members of friendly nations*. These two cases are so obviously and so essentially distinct, that it occasions no little surprise that the distinction should have been disregarded; and the surprise is so much the greater, as it appears that the two cases are actually distinguished by two separate acts of Congress, passed at the same session, and comprised in the same publication; the one providing for the case of "alien enemies"; the other, "concerning aliens" indiscriminately, and, consequently, extending to aliens of every nation in peace and amity with the United States. With respect to alien enemies, no doubt has been intimated as to the Federal authority over them; the Constitution having expressly delegated to Congress the power to declare war against any nation, and, of course,

to treat it and all its members as enemies. With respect to aliens who are not enemies, but members of nations in peace and amity with the United States, the power assumed by the act of Congress is denied to be constitutional; and it is, accordingly, against this act that the protest of the General Assembly is expressly and exclusively directed.

A third observation is, that were it admitted, as is contended, that the "act concerning aliens" has for its object, not a *penal*, but a *preventive* justice, it would still remain to be proved that it comes within the constitutional power of the Federal Legislature; and, if within its power, that the Legislature has exercised it in a constitutional manner.

In the administration of preventive justice the following principles have been held sacred: that some probable ground of suspicion be exhibited before some judicial authority; that it be supported by oath or affirmation; that the party may avoid being thrown into confinement by finding pledges or sureties for his legal conduct, sufficient in the judgment of some judicial authority; that he may have the benefit of a writ of *habeas corpus*, and thus obtain his release if wrongfully confined; and that he may at any time be discharged from his recognisance, or his confinement, and restored to his former liberty and rights on the order of the proper judicial authority, if it shall see sufficient cause.

All these principles of the only preventive justice known to American jurisprudence are violated by the Alien Act. The ground of suspicion is to be judged of, not by any judicial authority, but by the Executive Magistrate alone. No oath or affirmation is required. If the suspicion be held reasonable by the President, he may order the suspected alien to depart the territory of the United States, without the opportunity of avoiding the sentence by finding pledges for his future good conduct. As the President may limit the time of departure as he pleases, the benefit of the writ of *habeas corpus* may be suspended with respect to the party, although the Constitution ordains that it shall not be suspended unless when the public

safety may require it, in case of rebellion or invasion—neither of which existed at the passage of the act; and the party being, under the sentence of the President, either removed from the United States, or being punished by imprisonment, or disqualification ever to become a citizen, on conviction of not obeying the order of removal, he cannot be discharged from the proceedings against him, and restored to the benefits of his former situation, although the *highest judicial authority* should see the most sufficient cause for it.

But, in the last place, it can never be admitted that the removal of aliens, authorized by the act, is to be considered, not as punishment for an offence, but as a measure of precaution and prevention. If the banishment of an alien from a country into which he has been invited as the asylum most auspicious to his happiness—a country where he may have formed the most tender connexions; where he may have invested his entire property, and acquired property of the real and permanent, as well as the movable and temporary kind; where he enjoys, under the laws, a greater share of the blessings of personal security, and personal liberty, than he can elsewhere hope for, and where he may have nearly completed his probationary title to citizenship; if, moreover, in the execution of the sentence against him, he is to be exposed, not only to the ordinary dangers of the sea, but to the peculiar casualties incident to a crisis of war and of unusual licentiousness on that element, and possibly to vindictive purposes which his emigration itself may have provoked; if a banishment of this sort be not a punishment, and among the severest of punishments, it will be difficult to imagine a doom to which the name can be applied. And if it be a punishment, it will remain to be inquired whether it can be constitutionally inflicted, on mere suspicion, by the single will of the Executive Magistrate, on persons convicted of no personal offence against the laws of the land, nor involved in any offence against the law of nations, charged on the foreign State of which they are members.

One argument offered in justification of this power exercised

over aliens is, that the admission of them into the country being of favor, not of right, the favor is at all times revocable.

To this argument it might be answered, that, allowing the truth of the inference, it would be no proof of what is required. A question would still occur, whether the Constitution had vested the discretionary power of admitting aliens in the Federal Government or in the State governments.

But it cannot be a true inference, that, because the admission of an alien is a favor, the favor may be revoked at pleasure. A grant of land to an individual may be of favor, not of right; but the moment the grant is made, the favor becomes a right, and must be forfeited before it can be taken away. To pardon a malefactor may be a favor, but the pardon is not, on that account, the less irrevocable. To admit an alien to naturalization, is as much a favor as to admit him to reside in the country; yet it cannot be pretended that a person naturalized can be deprived of the benefits any more than a native citizen can be disfranchised.

Again, it is said, that aliens not being parties to the Constitution, the rights and privileges which it secures cannot be at all claimed by them.

To this reasoning, also, it might be answered that, although aliens are not parties to the Constitution, it does not follow that the Constitution has vested in Congress an absolute power over them. The parties to the Constitution may have granted, or retained, or modified, the power over aliens, without regard to that particular consideration.

But a more direct reply is, that it does not follow, because aliens are not parties to the Constitution, as citizens are parties to it, that, whilst they actually conform to it, they have no right to its protection. Aliens are not more parties to the laws than they are parties to the Constitution; yet it will not be disputed that, as they owe, on one hand, a temporary obedience, they are entitled, in return, to their protection and advantage.

If aliens had no rights under the Constitution, they might

not only be banished, but even capitally punished, without a jury or the other incidents to a fair trial. But so far has a contrary principle been carried, in every part of the United States, that, except on charges of treason, an alien has, besides all the common privileges, the special one of being tried by a jury, of which one-half may be also aliens.

It is said further, that, by the law and practice of nations, aliens may be removed, at discretion, for offences against the law of nations; that Congress are authorized to define and punish such offences; and that to be dangerous to the peace of society is, in aliens, one of those offences.

The distinction between alien enemies and alien friends is a clear and conclusive answer to this argument. Alien enemies are under the law of nations, and liable to be punished for offences against it. Alien friends, except in the single case of public ministers, are under the municipal law, and must be tried and punished according to that law only.

This argument also, by referring the alien act to the power of Congress to define and *punish* offences against the law of nations, yields the point that the act is of a *penal*, not merely of a preventive operation. It must, in truth, be so considered. And if it be a penal act, the punishment it inflicts must be justified by some offence that deserves it.

Offences for which aliens, within the jurisdiction of a country are punishable, are—first, offences committed by the nation of which they make a part, and in whose offences they are involved; secondly, offences committed by themselves alone, without any charge against the nation to which they belong The first is the case of alien enemies; the second, the case of alien friends. In the first case, the offending nation can no otherwise be punished than by war, one of the laws of which authorizes the expulsion of such of its members as may be found within the country against which the offence has been committed. In the second case—the offence being committed by the individual, not by his nation, and against the municipal law, not against the law of nations—the individual only, and

not the nation, is punishable; and the punishment must be conducted according to the municipal law, not according to the law of nations. Under this view of the subject, the act of Congress for the removal of alien enemies, being conformable to the law of nations, is justified by the Constitution and the "act" for the removal of alien friends, being repugnant to the constitutional principles of municipal law, is unjustifiable

Nor is the act of Congress for the removal of alien friends more agreeable to the general practice of nations than it is within the purview of the law of nations. The general practice of nations distinguishes between alien friends and alien enemies. The latter it has proceeded against, according to the law of nations, by expelling them as enemies. The former it has considered as under a local and temporary allegiance, and entitled to a correspondent protection. If contrary instances are to be found in barbarous countries, under undefined prerogatives, or amid revolutionary dangers, they will not be deemed fit precedents for the Government of the United States, even if not beyond its constitutional authority.

It is said that Congress may grant letters of marque and reprisal; that reprisals may be made on persons as well as property; and that the removal of aliens may be considered as the exercise, in an inferior degree, of the general power of reprisal on persons.

Without entering minutely into a question that does not seem to require it, it may be remarked that reprisal is a seizure of foreign persons or property, with a view to obtain that justice for injuries done by one State, or its members, to another State, or its members, for which a refusal of the aggressors requires such a resort to force under the law of nations. It must be considered as an abuse of words to call the removal of persons from a country a seizure or reprisal on them; nor is the distinction to be overlooked between reprisals on persons within the country and under the faith of its laws, and on persons out of the country. But laying aside these considerations, it is evidently impossible to bring the alien act within

the power of granting reprisals, since it does not allege or imply any injury received from any particular nation for which this proceeding against its members was intended as a reparation. The proceeding is authorized against aliens *of every nation;* of nations charged neither with any similar proceedings against American citizens, nor with any injuries for which justice might be sought in the mode prescribed by the act. Were it true, therefore, that good causes existed for reprisals against one or more foreign nations, and that neither the persons nor property of its members under the faith of our laws could plead an exemption, the operation of the act ought to have been limited to the aliens among us belonging to such nations. To license reprisals against all nations for aggressions charged on one only, would be a measure as contrary to every principle of justice and public law as to a wise policy, and the universal practice of nations.

It is said that the right of removing aliens is an incident to the power of war vested in Congress by the Constitution.

This is a former argument in a new shape only, and is answered by repeating, that the removal of alien enemies is an incident to the power of war; that the removal of alien friends is not an incident to the power of war.

It is said that Congress are, by the Constitution, to protect each State against invasion; and that the means of *preventing* invasion are included in the power of protection against it.

The power of war, in general, having been before granted by the Constitution, this clause must either be a mere specification for greater caution and certainty, of which there are other examples in the instrument, or be the injunction of a duty superadded to a grant of the power. Under either explanation it cannot enlarge the powers of Congress on the subject. The power and the duty to protect each State against an invading enemy would be the same under the general power, if this regard to greater caution had been omitted.

Invasion is an operation of war. To protect against invasion is an exercise of the power of war. A power, therefore,

not incident to war cannot be incident to a particular modification of war. And as the removal of alien friends has appeared to be no incident to a general state of war, it cannot be incident to a partial state or a particular modification of war.

Nor can it ever be granted that a power to act on a case when it actually occurs, includes a power over all the means that may *tend to prevent* the occurrence of the case. Such a latitude of construction would render unavailing every practical definition of particular and limited powers. Under the idea of preventing war in general, as well as invasion in particular, not only an indiscriminate removal of all aliens might be enforced, but a thousand other things still more remote from the operations and precautions appurtenant to war might take place. A bigoted or tyrannical nation might threaten us with war, unless certain religious or political regulations were adopted by us; yet it never could be inferred, if the regulations which would prevent war were such as Congress had otherwise no power to make, that the power to make them would grow out of the purpose they were to answer. Congress have power to suppress insurrections, yet it would not be allowed to follow that they might employ all the means tending to prevent them, of which a system of moral instruction for the ignorant, and of provident support for the poor, might be regarded as among the most efficacious.

One argument for the power of the General Government to remove aliens would have been passed in silence, if it had appeared under any authority inferior to that of a report made during the last session of Congress to the House of Representatives by a committee, and approved by the House. The doctrine on which this argument is founded is of so new and so extraordinary a character, and strikes so radically at the political system of America, that it is proper to state it in the very words of the report:

"The act [concerning aliens] is said to be unconstitutional, because to remove aliens is a direct breach of the Constitution, which provides, by the 9th section of the 1st article, that the

migration or importation of such persons as any of the States shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808."

Among the answers given to this objection to the constitutionality of the act, the following very remarkable one is extracted:

"Thirdly, that as the Constitution has *given to the States* no power to remove aliens during the period of the limitation under consideration, in the mean time, on the construction assumed, there would be no authority in the country empowered to send away dangerous aliens, which cannot be admitted."

The reasoning here used would not in any view be conclusive, because there are powers exercised by most other Governments, which, in the United States, are withheld by the people, both from the General Government and from the State governments. Of this sort are many of the powers prohibited by the Declarations of Right prefixed to the constitutions, or by the clauses in the constitutions in the nature of such declarations. Nay, so far is the political system of the United States distinguishable from that of other countries, by the caution with which powers are delegated and defined, that in one very important case, even of commercial regulation and revenue, the power is absolutely locked up against the hands of both Governments. A tax on exports can be laid by no constitutional authority whatever. Under a system thus peculiarly guarded there could surely be no absurdity in supposing that alien friends, who, if guilty of treasonable machinations, may be punished, or if suspected on probable grounds, may be secured by pledges or imprisonment, in like manner with permanent citizens, were never meant to be subjected to banishment by any arbitrary and unusual process, either under the one Government or the other.

But it is not the inconclusiveness of the general reasoning in this passage which chiefly calls the attention to it. It is the principle assumed by it, that the powers held by the States

are given to them by the Constitution of the United States; and the inference from this principle, that the powers supposed to be necessary which are not so given to the State governments, must reside in the Government of the United States.

The respect which is felt for every portion of the constituted authorities forbids some of the reflections which this singular paragraph might excite; and they are the more readily suppressed, as it may be presumed, with justice perhaps as well as candor, that inadvertence may have had its share in the error. It would be an unjustifiable delicacy, nevertheless, to pass by so portentous a claim, proceeding from so high an authority, without a monitory notice of the fatal tendencies with which it would be pregnant.

Lastly, it is said that a law on the same subject with the Alien Act, passed by this State originally in 1785, and re-enacted in 1792, is a proof that a summary removal of suspected aliens was not theretofore regarded by the Virginia Legislature as liable to the objections now urged against such a measure.

This charge against Virginia vanishes before the simple remark, that the law of Virginia relates to "suspicious persons, being the subjects of any foreign power or State who shall have *made a declaration of war*, or actually *commenced hostilities*, or from whom the President shall apprehend *hostile designs;*" whereas the act of Congress relates to aliens, being the subjects of foreign powers and States who have neither declared war nor commenced hostilities, nor from whom hostile designs are apprehended.

2. It is next affirmed by the Alien Act, that it unites legislative, judicial, and executive powers, in the hands of the President.

However difficult it may be to mark in every case with clearness and certainty the line which divides legislative power from the other departments of power, all will agree that the powers referred to these departments may be so general and undefined as to be of a legislative, not of an executive or

judicial nature, and may for that reason be unconstitutional. Details, to a certain degree, are essential to the nature and character of law; and on criminal subjects, it is proper that details should leave as little as possible to the discretion of those who are to apply and execute the law. If nothing more were required, in exercising a legislative trust, than a general conveyance of authority—without laying down any precise rules by which the authority conveyed should be carried into effect—it would follow that the whole power of legislation might be transferred by the Legislature from itself, and proclamations might become substitutes for laws. A delegation of power in this latitude would not be denied to be a union of the different powers.

To determine, then, whether the appropriate powers of the distinct departments are united by the act authorizing the Executive to remove aliens, it must be inquired whether it contains such details, definitions, and rules, as appertain to the true character of a law; especially a law by which personal liberty is invaded, property deprived of its value to the owner, and life itself indirectly exposed to danger.

The Alien Act declares "that it shall be lawful for the President to order all such aliens as he shall judge *dangerous* to the peace and safety of the United States, or shall have reasonable ground to *suspect* are concerned in any treasonable or *secret machinations* against the Government thereof, to depart," &c.

Could a power be given in terms less definite, less particular, and less precise? To be *dangerous to the public safety*—to be *suspected of secret machinations* against the Government; these can never be mistaken for legal rules or certain definitions. They leave everything to the President. His will is the law.

But it is not a legislative power only that is given to the President. He is to stand in the place of the judiciary also. His suspicion is the only evidence which is to convict; his order, the only judgment which is to be executed.

Thus it is the President whose will is to designate the offen-

sive conduct; it is his will that is to ascertain the individuals on whom it is charged; and it is his will that is to cause the sentence to be executed. It is rightly affirmed, therefore, that the act unites legislative and judicial powers to those of the executive.

3. It is affirmed that this union of power subverts the general principles of free government.

It has become an axiom in the science of government, that a separation of the legislative, executive, and judicial departments is necessary to the preservation of public liberty. Nowhere has this axiom been better understood in theory, or more carefully pursued in practice, than in the United States.

4. It is affirmed that such a union of power subverts the particular organization and positive provisions of the Federal Constitution.

According to the particular organization of the Constitution, its legislative powers are vested in the Congress, its executive powers in the President, and its judicial powers in a supreme and inferior tribunals. The union of any two of these powers, and still more of all three, in any one of these departments, as has been shown to be done by the Alien Act, must, consequently, subvert the constitutional organization of them.

That positive provisions in the Constitution, securing to individuals the benefits of fair trial, are also violated by the union of powers in the Alien Act, necessarily results from the two facts that the Act relates to alien friends, and that alien friends, being under the municipal law only, are entitled to its protection.

The *second* object against which the resolution protests is the Sedition Act.

Of this Act it is affirmed: 1. That it exercises in like manner a power not delegated by the Constitution. 2. That the power, on the contrary, is expressly and positively forbidden by one of the amendments to the Constitution. 3. That this is a power which more than any other ought to produce universal alarm, because it is levelled against that right of freely examining

public characters and measures, and of free communication thereon, which has ever been justly deemed the only effectual guardian of every other right.

1. That it exercises a power not delegated by the Constitution.

Here, again, it will be proper to recollect that the Federal Government being composed of powers specifically granted, with a reservation of all others to the States or to the people, the positive authority under which the Sedition Act could be passed must be produced by those who assert its constitutionality. In what part of the Constitution, then, is this authority to be found?

Several attempts have been made to answer this question, which will be examined in their order. The committee will begin with one which has filled them with equal astonishment and apprehension, and which, they cannot but persuade themselves, must have the same effect on all who will consider it with coolness and impartiality, and with a reverence for our Constitution in the true character in which it issued from the sovereign authority of the people. The committee refer to the doctrine lately advanced, as a sanction to the Sedition Act, "that the common or unwritten law," a law of vast extent and complexity, and embracing almost every possible subject of legislation, both civil and criminal, makes a part of the law of these States, in their united and national capacity.

The novelty, and, in the judgment of the committee, the extravagance of this pretension, would have consigned it to the silence in which they have passed by other arguments which an extraordinary zeal for the Act has drawn into the discussion; but the auspices under which this innovation presents itself have constrained the committee to bestow on it an attention which other considerations might have forbidden.

In executing the task, it may be of use to look back to the colonial state of this country, prior to the Revolution; to trace the effect of the Revolution which converted the Colonies into

independent States; to inquire into the import of the Articles of Confederation, the first instrument by which the Union of the States was regularly established; and, finally, to consult the Constitution of 1787, which is the oracle that must decide the important question.

In the state prior to the Revolution, it is certain that the common law, under different limitations, made a part of the colonial codes. But whether it be understood that the original colonists brought the law with them, or made it their law by adoption, it is equally certain that it was the separate law of each colony within its respective limits, and was unknown to them as a law pervading and operating through the whole as one society.

It could not possibly be otherwise. The common law was not the same in any two of the Colonies; in some the modifications were materially and extensively different. There was no common legislature by which a common will could be expressed in the form of a law; nor any common magistracy by which such a law could be carried into practice. The will of each colony, alone and separately, had its organs for these purposes.

This stage of our political history furnishes no foothold for the patrons of this new doctrine.

Did, then, the principle or operation of the great event which made the Colonies independent States imply or introduce the common law as a law of the Union?

The fundamental principle of the Revolution was, that the Colonies were co-ordinate members with each other and with Great Britain, of an empire united by a common executive sovereign, but not united by any common legislative sovereign. The legislative power was maintained to be as complete in each American Parliament, as in the British Parliament. And the royal prerogative was in force in each Colony by virtue of its acknowledging the King for its executive magistrate, as it was in Great Britain by virtue of a like acknowledgment there. A denial of these principles by Great Britain, and the assertion of them by America, produced the Revolution.

There was a time, indeed, when an exception to the legislative separation of the several component and co-equal parts of the empire obtained a degree of acquiescence. The British Parliament was allowed to regulate the trade with foreign nations, and between the different parts of the empire. This was, however, mere practice without right, and contrary to the true theory of the Constitution. The convenience of some regulations, in both cases, was apparent; and as there was no legislature with power over the whole, nor any constitutional pre-eminence among the legislatures of the several parts, it was natural for the legislature of that particular part which was the eldest and the largest to assume this function, and for the others to acquiesce in it. This tacit arrangement was the less criticised, as the regulations established by the British Parliament operated in favor of that part of the empire which seemed to bear the principle share of the public burdens, and were regarded as an indemnification of its advances for the other parts. As long as this regulating power was confined to the two objects of conveniency and equity, it was not complained of nor much inquired into. But, no sooner was it perverted to the selfish views of the party assuming it, than the injured parties began to feel and to reflect; and the moment the claim to a direct and indefinite power was ingrafted on the precedent of the regulating power, the whole charm was dissolved, and every eye opened to the usurpation. The assertion by Great Britain of a power to make laws for the other members of the empire *in all cases whatsoever*, ended in the discovery that she had a right to make laws for them *in no cases whatsoever*.

Such being the ground of our Revolution, no support nor colour can be drawn from it for the doctrine that the common law is binding on these States as one society. The doctrine, on the contrary, is evidently repugnant to the fundamental principle of the Revolution.

The Articles of Confederation are the next source of information on this subject.

In the interval between the commencement of the Revolution and the final ratification of these Articles, the nature and extent of the Union was determined by the circumstances of the crisis, rather than by any accurate delineation of the general authority. It will not be alleged that the "common law" could have had any legitimate birth as a law of the United States during that state of things. If it came as such into existence at all the Charter of Confederation must have been its parent.

Here again, however, its pretensions are absolutely destitute of foundation. This instrument does not contain a sentence or a syllable that can be tortured into a countenance of the idea that the parties to it were, with respect to the objects of the common law, to form one community. No such law is named, or implied,or alluded to, as being in force, or as brought into force by that compact. No provision is made by which such a law could be carried into operation; whilst, on the other hand, every such inference or pretext is absolutely precluded by Article II, which declares "that each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled."

Thus far it appears that not a vestige of this extraordinary doctrine can be found in the origin or progress of American institutions. The evidence against it has, on the contrary, grown stronger at every step, till it has amounted to a formal and positive exclusion, by written articles of compact among the parties concerned.

Is this exclusion revoked, and the common law introduced as national law by the present Constitution of the United States? This is the final question to be examined.

It is readily admitted that particular parts of the common law may have a sanction from the Constitution, so far as they are necessarily comprehended in the technical phrases which the powers delegated to the Government; and so far also as

such other parts may be adopted by Congress as necessary and proper for carrying into execution the powers expressly delegated. But the question does not relate to either of these portions of the common law. It relates to the common law beyond these limitations.

The only part of the Constitution which seems to have been relied on in this case is the 2d section of Article III: "The judicial power shall extend to all cases *in law and equity* arising *under this Constitution*, the laws of the United States, and treaties made or which shall be made under their authority."

It has been asked, what cases, distinct from those arising under the laws and treaties of the United States, can arise under the Constitution, other than those arising under the common law? and it is inferred that the common law is accordingly adopted or recognized by the Constitution.

Never, perhaps, was so broad a construction applied to a text so clearly unsusceptible of it. If any colour for the inference could be found, it must be in the impossibility of finding any other cases in law and equity, within the provisions of the Constitution, to satisfy the expression; and rather than resort to a construction affecting so essentially the whole character of the Government, it would perhaps be more rational to consider the expression as a mere pleonasm or inadvertence. But it is not necessary to decide on such a dilemma. The expression is fully satisfied and its accuracy justified by two descriptions of cases to which the judicial authority is extended, and neither of which implies that the common law is the law of the United States. One of these descriptions comprehends the case growing out of the restrictions on the legislative power of the States. For example, it is provided that "no State shall emit bills of credit," or "make any thing but gold and silver coin a tender in payment of debts." Should this prohibition be violated, and a suit *between citizens of the same State* be the consequence, this would be a case arising under the Constitution before the judicial power of the United States. A second description compre-

hends suits between citizens and foreigners, of citizens of different States, to be decided according to the State or foreign laws, but submitted by the Constitution to the judicial power of the United States, the judicial power being in several instances extended beyond the legislative power of the United States.

To this explanation of the text the following observations may be added:

The expression "cases in law and equity" is manifestly confined to cases of a civil nature, and would exclude cases of criminal jurisdiction. Criminal cases in law and equity would be a language unknown to the law.

The succeeding paragraph of the same section is in harmony with this construction. It is in these words: "In all cases affecting ambassadors, or other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. *In all* the other cases (including cases of law and equity arising under the Constitution) the Supreme Court shall have *appellate* jurisdiction both as to law and *fact;* with such exceptions and under such regulations as Congress shall make."

This paragraph, by expressly giving an *appellate* jurisdiction in cases of law and equity arising under the Constitution, to *fact* as well as to law, clearly excludes criminal cases where the trial by jury is secured, because the fact in such cases is not a subject of appeal. And, although the appeal is liable to such *exceptions* and regulations as Congress may adopt, yet it is not to be supposed that an *exception* of *all* criminal cases could be contemplated, as well because a discretion in Congress to make or omit the exception would be improper, as because it would have been unnecessary. The exception could as easily have been made by the Constitution itself, as referred to the Congress.

Once more: the amendment last added to the Constitution deserves attention as throwing light on this subject. "The judicial power of the United States shall not be construed to

extend to any suit in *law* or *equity* commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign power." As it will not be pretended that any criminal proceeding could take place against a State, the terms *law* or *equity* must be understood as appropriate to *civil* in exclusion of *criminal* cases.

From these considerations it is evident that this part of the Constitution, even if it could be applied at all to the purpose for which it has been cited, would not include any cases whatever of a criminal nature, and consequently would not authorize the inference from it that the judicial authority extends to *offences* against the common law as offences arising under the Constitution.

It is further to be considered that, even if this part of the Constitution could be strained into an application to every common-law case, criminal as well as civil, it could have no effect in justifying the Sedition Act; which is an exercise of legislative and not of judicial power: and it is the judicial power only of which the extent is defined in this part of the Constitution.

There are two passages in the Constitution in which a description of the law of the United States is found. The first is contained in Article III, Section 2, in the words following: "This Constitution, the laws of the United States, and treaties made or which shall be made under their authority." The second is contained in the second paragraph of Article VI, as follows: "This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land." The first of these descriptions was meant as a guide to the judges of the United States; the second, as a guide to the judges of the several States. Both of them consist of an enumeration which was evidently meant to be precise and complete. If the common law had been understood to be a law of the United States, it is not possible to assign a satisfac-

tory reason why it was not expressed in the enumeration.

In aid of these objections the difficulties and confusion inseparable from a constructive introduction of the common law would afford powerful reasons against it.

Is it to be the common law with or without the British statutes?

If without the statutory amendments, the vices of the code would be insupportable.

If with these amendments, what period is to be fixed for limiting the British authority over our laws?

Is it to be the date of the eldest or the youngest of the Colonies?

Or are the dates to be thrown together and a medium deduced?

Or is our independence to be taken for the date?

Is, again, regard to be had to the various changes in the common law made by the local codes of America?

Is regard to be had to such changes, subsequent as well as prior to the establishment of the Constitution?

Is regard to be had to future as well as to past changes?

Is the law to be different in every State as differently modified by its code, or are the modifications of any particular State to be applied to all?

And, on the latter supposition, which, among the State codes would form the standard?

Questions of this sort might be multiplied with as much ease as there would be difficulty in answering them.

The consequences flowing from the proposed construction furnish other objections equally conclusive, unless the text were peremptory in its meaning and consistent with other parts of the instrument.

These consequences may be in relation to the legislative authority of the United States; to the executive authority; to the judicial authority; and to the governments of the several States.

If it be understood that the common law is established by the Constitution, it follows that no part of the law can be

altered by the Legislature; such of the statutes already passed as may be repugnant thereto would be nullified, particularly the Sedition Act itself, which boasts of being a melioration of the common law; and the whole code, with all its incongruities, barbarisms, and bloody maxims, would be inviolably saddled on the good people of the United States.

Should this consequence be rejected and the common law be held, like other laws, liable to revision and alteration by the authority of Congress, it then follows that the authority of Congress is co-extensive with the objects of common law—that is to say, with every object of legislation; for to every such object does some branch or other of the common law extend. The authority of Congress would therefore be no longer under the limitations marked out in the Constitution. They would be authorized to legislate in all cases whatsoever.

In the next place, as the President possesses the executive powers of the Constitution, and is to see that the laws be faithfully executed, his authority also must be co-extensive with every branch of the common law. The additions which this would make to his power, though not readily to be estimated, claim the most serious attention.

This is not all; it will merit the most profound consideration, how far an indefinite admission of the common law, with a latitude in construing it, equal to the construction by which it is deduced from the Constitution, might draw after it the various prerogatives making part of the unwritten law of England. The English Constitution itself is nothing more than a composition of unwritten laws and maxims.

In the third place, whether the common law be admitted as of legal or of constitutional obligation, it would confer on the judicial department a discretion little short of a legislative power.

On the supposition of its having a constitutional obligation, this power in the judges would be permanent and irremediable by the Legislature. On the other supposition the power would not expire until the Legislature should have introduced a full

system of statutory provisions. Let it be observed, too, that besides all the uncertainties above enumerated, and which present an immense field for judicial discretion, it would remain with the same department to decide what parts of the common law would, and what would not, be properly applicable to the circumstances of the United States.

A discretion of this sort has always been lamented as incongruous and dangerous, even in the Colonial and State courts, although so much narrowed by positive provisions in the local codes on all the principal subjects embraced by the common law. Under the United States, where so few laws exist on those subjects, and where so great a lapse of time must happen before the vast chasm could be supplied, it is manifest that the power of the judges over the law would, in fact, erect them into legislators, and that for a long time it would be impossible for the citizens to conjecture, either what was or would be law.

In the last place, the consequence of admitting the common law as the law of the United States, on the authority of the individual States, is as obvious as it would be fatal. As this law relates to every subject of legislation, and would be paramount to the Constitutions and laws of the States, the admission of it would overwhelm the residuary sovereignty of the States, and by one constructive operation new model the whole political fabric of the country.

From the review thus taken of the situation of the American colonies prior to their independence; of the effect of this event on their situation; of the nature and import of the Articles of Confederation; of the true meaning of the passage in the existing Constitution from which the common law has been deduced; of the difficulties and uncertainties incident to the doctrine; and of its vast consequences in extending the powers of the Federal Government, and in superseding the authorities of the State governments—the committee feel the utmost confidence in concluding that the common law never was, nor by any fair construction ever can be, deemed a law for the American people as one community; and they indulge the strongest

expectation that the same conclusion will finally be drawn by all candid and accurate inquirers into the subject. It is, indeed, distressing to reflect that it ever should have been made a question, whether the Constitution, on the whole face of which is seen so much labor to enumerate and define the several objects of Federal power, could intend to introduce in the lump, in an indirect manner, and by a forced construction of a few phrases, the vast and multifarious jurisdiction involved in the common law—a law filling so many ample volumes; a law overspreading the entire field of legislation; and a law that would sap the foundation of the Constitution as a system of limited and specified powers. A severer reproach could not, in the opinion of the committee, be thrown on the Constitution, on those who framed or on those who established it, than such a supposition would throw on them.

The argument, then, drawn from the common law, on the ground of its being adopted or recognised by the Constitution, being inapplicable to the Sedition Act, the committee will proceed to examine the other arguments which have been founded on the Constitution.

They will waste but little time on the attempt to cover the act by the preamble to the Constitution, it being contrary to every acknowledged rule of construction to set up this part of an instrument in opposition to the plain meaning expressed in the body of the instrument. A preamble usually contains the general motives or reasons for the particular regulations or measures which follow it, and is always understood to be explained and limited by them. In the present instance, a contrary interpretation would have the inadmissible effect of rendering nugatory or improper every part of the Constitution which succeeds the preamble.

The paragraph in Article I, Section 8, which contains the power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare, having been already examined, will also require no particular attention in this place. It will have

been seen that, in its fair and consistent meaning, it cannot enlarge the enumerated powers vested in Congress.

The part of the Constitution which seems most to be recurred to, in the defence of the Sedition Act, is the last clause of the above section, empowering Congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

The plain import of this clause is, that Congress shall have all the incidental or instrumental powers necessary and proper for carrying into execution all the express powers, whether they be vested in the Government of the United States, more collectively, or in the several departments or officers thereof.

It is not a grant of new powers to Congress, but merely a declaration, for the removal of all uncertainty, that the means of carrying into execution those otherwise granted are included in the grant.

Whenever, therefore, a question arises concerning the constitutionality of a particular power, the first question is, whether the power be expressed in the Constitution. If it be, the question is decided. If it be not expressed, the next inquiry must be, whether it is properly an incident to an express power, and necessary to its execution. If it be, it may be exercised by Congress. If it be not, Congress cannot exercise it.

Let the question be asked, then, whether the power over the press exercised in the Sedition Act be found among the powers expressly vested in the Congress. This is not pretended.

Is there any express power, for executing which it is a necessary and proper power?

The power which has been selected, as least remote, in answer to this question, is that "of suppressing insurrections"; which is said to imply a power to *prevent* insurrections, by punishing whatever may *lead* or *tend* to them. But it surely

cannot, with the least plausibility, be said, that the regulation of the press, and a punishment of libels, are exercises of a power to suppress insurrections. The most that could be said would be that the punishment of libels, if it had the tendency ascribed to it, might prevent the occasion of passing or executing laws necessary and proper for the suppression of insurrections.

Has the Federal Government no power, then, to prevent as well as to punish resistance to the laws?

They have the power, which the Constitution deemed most proper, in their hands for the purpose. The Congress has power, before it happens, to pass laws for punishing it; and the executive and judiciary have power to enforce those laws when it does happen.

It must be recollected by many, and could be shown to the satisfaction of all, that the construction here put on the terms "necessary and proper" is precisely the construction which prevailed during the discussions and ratifications of the Constitution. It may be added, and cannot too often be repeated, that it is a construction absolutely necessary to maintain their consistency with the peculiar character of the Government, as possessed of particular and definite powers only, not of the general and indefinite powers vested in ordinary Governments; for if the power to *suppress insurrections* includes a power to *punish libels*, or if the power to *punish* includes a power to *prevent*, by all the means that may have that *tendency*, such is the relation and influence among the most remote subjects of legislation, that a power over a very few would carry with it a power over all. And it must be wholly immaterial whether unlimited powers be exercised under the name of unlimited powers, or be exercised under the name of unlimited means of carrying into execution limited powers.

This branch of the subject will be closed with a reflection which must have weight with all, but more especially with those who place peculiar reliance on the judicial exposition of the Constitution as the bulwark provided against undue

extensions of the legislative power. If it be understood that the powers implied in the specified powers have an immediate and appropriate relation to them, as means necessary and proper for carrying them into execution, questions on the constitutionality of laws passed for this purpose will be of a nature sufficiently precise and determinate for judicial cognizance and control. If, on the other hand, Congress are not limited in the choice of means by any such appropriate relation of them to the specified powers; but may employ all such means as they may deem fitted to *prevent* as well as to *punish* crimes subjected to their authority; such as may have a *tendency* only to *promote* an object for which they are authorized to provide; every one must perceive that questions relating to means of this sort must be questions for mere policy and expediency, on which legislative discretion alone can decide, and from which the judicial interposition and control are completely excluded.

2. The next point which the resolution requires to be proved is, that the power over the press exercised by the Sedition Act is positively forbidden by one of the amendments to the Constitution.

The amendment stands in these words: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, *or abridging the freedom of speech or of the press;* or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

In the attempts to vindicate the Sedition Act it has been contended—1. That the "freedom of the press" is to be determined by the meaning of these terms in the common law. 2. That the article supposes the power over the press to be in Congress, and prohibits them only from *abridging* the freedom allowed to it by the common law.

Although it will be shown, on examining the second of these positions, that the amendment is a denial to Congress of all power over the press, it may not be useless to make the following observations on the first of them:

It is deemed to be a sound opinion that the Sedition Act, in its definition of some of the crimes created, is an abridgment of the freedom of publication, recognised by principles of the common law in England.

The freedom of the press under the common law is, in the defences of the Sedition Act, made to consist in an exemption from all *previous* restraint on printed publications by persons authorized to inspect and prohibit them. It appears to the committee that this idea of the freedom of the press can never be admitted to be the American idea of it; since a law inflicting penalties on printed publications would have a similar effect with a law authorizing a previous restraint on them. It would seem a mockery to say that no laws should be passed preventing publications from being made, but that laws might be passed for punishing them in case they should be made.

The essential difference between the British Government and the American Constitutions will place this subject in the clearest light.

In the British Government the danger of encroachments on the rights of the people is understood to be confined to the executive magistrate. The representatives of the people in the Legislature are not only exempt themselves from distrust, but are considered as sufficient guardians of the rights of their constituents against the danger from the Executive. Hence it is a principle, that the Parliament is unlimited in its power; or, in their own language, is omnipotent. Hence, too, all the ramparts for protecting the rights of the people—such as their Magna Charta, their Bill of Rights, &c.—are not reared against the Parliament, but against the royal prerogative. They are merely legislative precautions against executive usurpations. Under such a government as this, an exemption of the press from previous restraint, by licensers appointed by the King, is all the freedom that can be secured to it.

In the United States the case is altogether different. The People, not the Government, possess the absolute sovereignty. The Legislature, no less than the Executive, is under limita-

tions of power. Encroachments are regarded as possible from the one as well as from the other. Hence, in the United States the great and essential rights of the people are secured against legislative as well as against executive ambition. They are secured, not by laws paramount to prerogative, but by constitutions paramount to laws. This security of the freedom of the press requires that it should be exempt not only from previous restraint by the Executive, as in Great Britain, but from legislative restraint also; and this exemption, to be effectual, must be an exemption not only from the previous inspection of licensers, but from the subsequent penalty of laws.

The state of the press, therefore, under the common law, cannot, in this point of view, be the standard of its freedom in the United States.

But there is another view under which it may be necessary to consider this subject. It may be alleged that although the security for the freedom of the press be different in Great Britain and in this country, being a legal security only in the former, and a constitutional security in the latter; and although there may be a further difference, in an extension of the freedom of the press, here, beyond an exemption from previous restraint, to an exemption from subsequent penalties also; yet that the actual legal freedom of the press, under the common law, must determine the degree of freedom which is meant by the terms, and which is constitutionally secured against both previous and subsequent restraints.

The committee are not unaware of the difficulty of all general questions which may turn on the proper boundary between the liberty and licentiousness of the press. They will leave it, therefore, for consideration only how far the difference between the nature of the British Government and the nature of the American Governments, and the practice under the latter may show the degree of rigor in the former to be inapplicable to and not obligatory in the latter.

The nature of governments elective, limited, and responsible

in all their branches, may well be supposed to require a greater freedom of animadversion than might be tolerated by the genius of such a government as that of Great Britain. In the latter it is a maxim that the King, an hereditary, not a responsible magistrate, can do no wrong, and that the Legislature, which in two-thirds of its composition is also hereditary, not responsible, can do what it pleases. In the United States the executive magistrates are not held to be infallible, nor the Legislatures to be omnipotent; and both being elective, are both responsible. Is it not natural and necessary, under such different circumstances, that a different degree of freedom in the use of the press should be contemplated?

Is not such an inference favoured by what is observable in Great Britain itself? Notwithstanding the general doctrine of the common law on the subject of the press, and the occasional punishment of those who use it with a freedom offensive to the Government, it is well known that with respect to the responsible members of the Government, where the reasons operating here become applicable there, the freedom exercised by the press and protected by public opinion far exceeds the limits prescribed by the ordinary rules of law. The ministry, who are responsible to impeachment, are at all times animadverted on by the press with peculiar freedom, and during the elections for the House of Commons, the other responsible part of the Government, the press is employed with as little reserve towards the candidates.

The practice in America must be entitled to much more respect. In every State, probably, in the Union, the press has exerted a freedom in canvassing the merits and measures of public men of every description which has not been confined to the strict limits of the common law. On this footing the freedom of the press has stood; on this footing it yet stands. And it will not be a breach either of truth or of candour to say, that no persons or presses are in the habit of more unrestrained animadversions on the proceedings and functionaries of the State governments than the persons and presses most zealous

in vindicating the act of Congress for punishing similar animadversions on the Government of the United States.

The last remark will not be understood as claiming for the State governments an immunity greater than they have heretofore enjoyed. Some degree of abuse is inseparable from the proper use of every thing, and in no instance is this more true than in that of the press. It has accordingly been decided by the practice of the States, that it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits. And can the wisdom of this policy be doubted by any who reflect that to the press alone, chequered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity over error and oppression; who reflect that to the same beneficent source the United States owe much of the lights which conducted them to the ranks of a free and independent nation, and which have improved their political system into a shape so auspicious to their happiness? Had "Sedition Acts," forbidding every publication that might bring the constituted agents into contempt or disrepute, or that might excite the hatred of the people against the authors of unjust or pernicious measures, been uniformly enforced against the press, might not the United States have been languishing at this day under the infirmities of a sickly Confederation? Might they not, possibly, be miserable colonies, groaning under a foreign yoke?

To these observations one fact will be added, which demonstrates that the common law cannot be admitted as the *universal* expositor of American terms, which may be the same with those contained in that law. The freedom of conscience and of religion are found in the same instruments which assert the freedom of the press. It will never be admitted that the meaning of the former, in the common law of England, is to limit their meaning in the United States.

Whatever weight may be allowed to these considerations, the committee do not, however, by any means intend to rest

the question on them. They contend that the article of amendment, instead of supposing in Congress a power that might be exercised over the press, provided its freedom was not abridged, was meant as a positive denial to Congress of any power whatever on the subject.

To demonstrate that this was the true object of the article, it will be sufficient to recall the circumstances which led to it, and to refer to the explanation accompanying the article.

When the Constitution was under the discussions which preceded its ratification, it is well known that great apprehensions were expressed by many, lest the omission of some positive exception, from the powers delegated, of certain rights, and of the freedom of the press particularly, might expose them to the danger of being drawn, by construction, within some of the powers vested in Congress, more especially of the power to make all laws necessary and proper for carrying their other powers into execution. In reply to this objection, it was invariably urged to be a fundamental and characteristic principle of the Constitution, that all powers not given by it were reserved; that no powers were given beyond those enumerated in the Constitution, and such as were fairly incident to them; that the power over the rights in question, and particularly over the press, was neither among the enumerated powers, nor incident to any of them; and consequently that an exercise of any such power would be manifest usurpation. It is painful to remark how much the arguments now employed in behalf of the Sedition Act are at variance with the reasoning which then justified the Constitution, and invited its ratification.

From this posture of the subject resulted the interesting question, in so many of the Conventions, whether the doubts and dangers ascribed to the Constitution should be removed by any amendments previous to the ratification, or be postponed in confidence that, as far as they might be proper, they would be introduced in the form provided by the Constitution. The latter course was adopted; and in most of the States, ratifications were followed by propositions and instructions

for rendering the Constitution more explicit, and more safe to the rights not meant to be delegated by it. Among those rights, the freedom of the press, in most instances, is particularly and emphatically mentioned. The firm and very pointed manner in which it is asserted in the proceedings of the Convention of this State will be hereafter seen.

In pursuance of the wishes thus expressed, the first Congress that assembled under the Constitution proposed certain amendments, which have since, by the necessary ratifications, been made a part of it; among which amendments is the article containing, among other prohibitions on the Congress, an express declaration that they should make no law abridging the freedom of the press.

Without tracing farther the evidence on this subject, it would seem scarcely possible to doubt that no power whatever over the press was supposed to be delegated by the Constitution, as it originally stood, and that the amendment was intended as a positive and absolute reservation of it.

But the evidence is still stronger. The proposition of amendments made by Congress is introduced in the following terms:

"The Conventions of a number of the States having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstructions or abuse of its powers, that further declaratory and restrictive clauses should be added; and as extending the ground of public confidence in the Government will best insure the beneficent ends of its institution."

Here is the most satisfactory and authentic proof that the several amendments proposed were to be considered as either declaratory or restrictive, and, whether the one or the other as corresponding with the desire expressed by a number of the States, and as extending the ground of public confidence in the Government.

Under any other construction of the amendment relating to the press, than that it declared the press to be wholly exempt from the power of Congress, the amendment could neither

be said to correspond with the desire expressed by a number of the States, nor be calculated to extend the ground of public confidence in the Government.

Nay, more; the construction employed to justify the Sedition Act would exhibit a phenomenon without a parallel in the political world. It would exhibit a number of respectable States, as denying, first, that any power over the press was delegated by the Constitution; as proposing, next, that an amendment to it should explicitly declare that no such power was delegated; and, finally, as concurring in an amendment actually recognising or delegating such a power.

Is, then, the Federal Government, it will be asked, destitute of every authority for restraining the licentiousness of the press, and for shielding itself against the libellous attacks which may be made on those who administer it?

The Constitution alone can answer this question. If no such power be expressly delegated, and if it be not both necessary and proper to carry into execution an express power—above all, if it be expressly forbidden, by a declaratory amendment to the Constitution—the answer must be, that the Federal Government is destitute of all such authority.

And might it not be asked, in turn, whether it is not more probable, under all the circumstances which have been reviewed, that the authority should be withheld by the Constitution, than that it should be left to a vague and violent construction, whilst so much pains were bestowed in enumerating other powers, and so many less important powers are included in the enumeration?

Might it not be likewise asked, whether the anxious circumspection which dictated so many peculiar limitations on the general authority would be unlikely to exempt the press altogether from that authority? The peculiar magnitude of some of the powers necessarily committed to the Federal Government; the peculiar duration required for the functions of some of its departments; the peculiar distance of the seat of its proceedings from the great body of its constituents; and the

peculiar difficulty of circulating an adequate knowledge of them through any other channel; will not these considerations, some or other of which produced other exceptions from the powers of ordinary governments, all together, account for the policy of binding the hand of the Federal Government from touching the channel which alone can give efficacy to its responsibility to its constituents, and of leaving those who administer it to a remedy, for their injured reputations, under the same laws, and in the same tribunals, which protect their lives, their liberties, and their properties?

But the question does not turn either on the wisdom of the Constitution or on the policy which gave rise to its particular organization. It turns on the actual meaning of the instrument, by which it has appeared that a power over the press is clearly excluded from the number of powers delegated to the Federal Government.

3. And, in the opinion of the committee, well may it be said, as the resolution concludes with saying, that the unconstitutional power exercised over the press by the Sedition Act ought, "more than any other, to produce universal alarm; because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right."

Without scrutinizing minutely into all the provisions of the Sedition Act, it will be sufficient to cite so much of section 2d as follows: "And be it further enacted, that if any person shall write, print, utter, or publish, or shall cause or procure to be written, printed, uttered, or published, or shall knowingly and willingly assist or aid in writing, printing, uttering, or publishing, any false, scandalous, and malicious writing or writings against the Government of the United States, or either house of the Congress of the United States, or the President of the United States, with an intent to defame the said Government or either house of the said Congress, or the President, or to bring them or either of them into contempt

or disrepute, or to excite against them, or either or any of them, the hatred of the good people of the United States, &c.—then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years."

On this part of the act, the following observations present themselves:

1. The Constitution supposes that the President, the Congress, and each of its Houses, may not discharge their trusts, either from defect of judgment or other causes. Hence they are all made responsible to their constituents, at the returning periods of election; and the President, who is singly intrusted with very great powers, is, as a further guard, subjected to an intermediate impeachment.

2. Should it happen, as the Constitution supposes it may happen, that either of these branches of the Government may not have duly discharged its trust; it is natural and proper, that, according to the cause and degree of their faults, they should be brought into contempt or disrepute, and incur the hatred of the people.

3. Whether it has, in any case, happened that the proceedings of either or all of those branches evince such a violation of duty as to justify a contempt, a disrepute, or hatred among the people, can only be determined by a free examination thereof, and a free communication among the people thereon.

4. Whenever it may have actually happened that proceedings of this sort are chargeable on all or either of the branches of the Government, it is the duty, as well as right, of intelligent and faithful citizens to discuss and promulge them freely, as well to control them by the censorship of the public opinion, as to promote a remedy according to the rules of the Constitution. And it cannot be avoided that those who are to apply the remedy must feel, in some degree, a contempt or hatred against the transgressing party.

5. As the act was passed on July 14, 1798, and is to be in

force until March 3, 1801, it was of course that, during its continuance, two elections of the entire House of Representatives, an election of a part of the Senate, and an election of a President, were to take place.

6. That, consequently, during all these elections, intended by the Constitution to preserve the purity or to purge the faults of the Administration, the great remedial rights of the people were to be exercised, and the responsibility of their public agents to be screened, under the penalties of this act.

May it not be asked of every intelligent friend to the liberties of his country, whether the power exercised in such an act as this ought not to produce great and universal alarm? Whether a rigid execution of such an act, in time past, would not have repressed that information and communication among the people which is indispensable to the just exercise of their electoral rights? And whether such an act, if made perpetual, and enforced with rigor, would not, in time to come, either destroy our free system of government, or prepare a convulsion that might prove equally fatal to it?

In answer to such questions, it has been pleaded that the writings and publications forbidden by the act are those only which are false and malicious, and intended to defame; and merit is claimed for the privilege allowed to authors to justify, by proving the truth of their publications, and for the limitations to which the sentence of fine and imprisonment is subjected.

To those who concurred in the act, under the extraordinary belief that the option lay between the passing of such an act and leaving in force the common law of libels, which punishes truth equally with falsehood, and submits the fine and imprisonment to the indefinite discretion of the court, the merit of good intentions ought surely not to be refused. A like merit may perhaps be due for the discontinuance of the corporal punishment, which the common law also leaves to the discretion of the court. This merit of intention, however, would have been greater, if the several mitigations had not

been limited to so short a period; and the apparent inconsistency would have been avoided, between justifying the act, at one time, by contrasting it with the rigors of the common law otherwise in force; and at another time, by appealing to the nature of the crisis, as requiring the temporary rigor exerted by the act.

But, whatever may have been the meritorious intentions of all or any who contributed to the Sedition Act, a very few reflections will prove that its baleful tendency is little diminished by the privilege of giving in evidence the truth of the matter contained in political writings.

In the first place, where simple and naked facts alone are in question, there is sufficient difficulty in some cases, and sufficient trouble and vexation in all, of meeting a prosecution from the Government with the full and formal proof necessary in a court of law.

But in the next place, it must be obvious to the plainest minds, that opinions and inferences, and conjectural observations, are not only in many cases inseparable from the facts, but may often be more the objects of the prosecution than the facts themselves; or may even be altogether abstracted from particular facts; and that opinions, and inferences, and conjectural observations, cannot be subjects of that kind of proof which appertains to facts, before a court of law.

Again: it is no less obvious that the intent to defame, or bring into contempt, or disrepute, or hatred—which is made a condition of the offence created by the act—cannot prevent its pernicious influence on the freedom of the press. For, omitting the inquiry, how far the malice of the intent is an inference of the law from the mere publication, it is manifestly impossible to punish the intent to bring those who administer the Government into disrepute or contempt, without striking at the right of freely discussing public characters and measures; because those who engage in such discussions must expect and intend to excite these unfavorable sentiments, so far as they may be thought to be deserved. To prohibit, therefore, the

intent to excite those unfavorable sentiments against those who administer the Government, is equivalent to a prohibition of the actual excitement of them; and to prohibit the actual excitement of them is equivalent to a prohibition of discussions having that tendency and effect; which, again, is equivalent to a protection of those who administer the Government, if they should at any time deserve the contempt or hatred of the people, against being exposed to it by free animadversions on their characters and conduct. Nor can there be a doubt, if those in public trust be shielded by penal laws from such strictures of the press as may expose them to contempt, or disrepute or hatred, where they may deserve it, that, in exact proportion as they may deserve to be exposed, will be the certainty and criminality of the intent to expose them, and the vigilance of prosecuting and punishing it; nor a doubt that a government thus intrenched in penal statutes against the just and natural effects of a culpable administration will easily evade the responsibility which is essential to a faithful discharge of its duty.

Let it be recollected, lastly, that the right of electing the members of the Government constitutes more particularly the essence of a free and responsible government. The value and efficacy of this right depends on the knowledge of the comparative merits and demerits of the candidates for public trust, and on the equal freedom, consequently, of examining and discussing these merits and demerits of the candidates respectively. It has been seen that a number of important elections will take place while the act is in force, although it should not be continued beyond the term to which it is limited. Should there happen, then, as is extremely probable in relation to some or other of the branches of the Government, to be competitions between those who are and those who are not members of the Government, what will be the situations of the competitors? Not equal; because the characters of the former will be covered by the Sedition Act from animadversions exposing them to disrepute among the people, whilst

the latter may be exposed to the contempt and hatred of the people without a violation of the act. What will be the situation of the people? Not free; because they will be compelled to make their election between competitors whose pretensions they are not permitted by the act equally to examine, to discuss, and to ascertain. And from both these situations will not those in power derive an undue advantage for continuing themselves in it, which, by impairing the right of election, endangers the blessings of the Government founded on it?

It is with justice, therefore, that the General Assembly have affirmed, in the resolution, as well that the right of freely examining public characters and measures, and of free communication thereon, is the only effectual guardian of every other right, as that this particular right is levelled at by the power exercised in the Sedition Act.

The Resolution next in order is as follows:

"That this State having, by its Convention, which ratified the Federal Constitution, expressly declared that, among other essential rights, 'the liberty of conscience and of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States;' and, from its extreme anxiety to guard these rights from every possible attack of sophistry and ambition, having, with other States, recommended an amendment for that purpose, which amendment was in due time annexed to the Constitution, it would mark a reproachful inconsistency, and criminal degeneracy, if an indifference were now shown to the most palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other."

To place this Resolution in its just light, it will be necessary to recur to the act of ratification by Virginia, which stands in the ensuing form:

"We, the delegates of the people of Virginia, duly elected in pursuance of a recommendation from the General Assembly and now met in Convention, having fully and freely investi-

gated and discussed the proceedings of the Federal Convention, and being prepared, as well as the most mature deliberation hath enabled us, to decide thereon—DO, in the name and in behalf of the people of Virginia declare and make known that the powers granted under the Constitution, being derived from the people of the United States, may be resumed by them whensoever the same shall be perverted to their injury or oppression; and that every power not granted thereby remains with them, and at their will. That, therefore, no right of any denomination can be cancelled, abridged, restrained, or modified, by the Congress, by the Senate or House of Representatives, acting in any capacity, by the President, or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes; and that, among other essential rights, the liberty of conscience and of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States."

Here is an express and solemn declaration by the Convention of the State, that they ratified the Constitution in the sense that no right of any denomination can be cancelled, abridged, restrained, or modified, by the Government of the United States, or any part of it, except in those instances in which power is given by the Constitution; and in the sense, particularly, "that among other essential rights, the liberty of conscience and freedom of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States."

Words could not well express in a fuller or more forcible manner the understanding of the Convention, that the liberty of conscience and the freedom of the press were *equally* and *completely* exempted from all authority whatever of the United States.

Under an anxiety to guard more effectually these rights against every possible danger, the Convention, after ratifying the Constitution, proceeded to prefix to certain amendments

proposed by them a declaration of rights, in which are two articles providing, the one for the liberty of conscience, the other for the freedom of speech and of the press.

Similar recommendations having proceeded from a number of other States, and Congress, as has been seen, having, in consequence thereof, and with a view to extend the ground of public confidence, proposed, among other declaratory and restrictive clauses, a clause expressly securing the liberty of conscience and of the press, and Virginia having concurred in the ratifications which made them a part of the Constitution, it will remain with a candid public to decide whether it would not mark an inconsistency and degeneracy, if an indifference were now shown to a palpable violation of one of those rights—the freedom of the press; and to a precedent, therein, which may be fatal to the other—the free exercise of religion.

That the precedent established by the violation of the former of these rights may, as is affirmed by the resolution, be fatal to the latter, appears to be demonstrable by a comparison of the grounds on which they respectively rest, and from the scope of reasoning by which the power over the former has been vindicated.

First. Both of these rights, the liberty of conscience and of the press, rest equally on the original ground of not being delegated by the Constitution, and, consequently, withheld from the Government. Any construction, therefore, that would attack this original security for the one must have the like effect on the other.

Secondly. They are both equally secured by the supplement to the Constitution, being both included in the same amendment, made at the same time, and by the same authority. Any construction or argument, then, which would turn the amendment into a grant or acknowledgment of power with respect to the press, might be equally applied to the freedom of religion.

Thirdly. If it be admitted that the extent of the freedom of the press secured by the amendment is to be measured by

the common law on this subject, the same authority may be resorted to for the standard which is to fix the extent of the "free exercise of religion." It cannot be necessary to say what this standard would be; whether the common law be taken solely as the unwritten, or as varied by the written law of England.

Fourthly. If the words and phrases in the amendment are to be considered as chosen with a studied discrimination, which yields an argument for a power over the press under the limitation that its freedom be not abridged, the same argument results from the same consideration for a power over the exercise of religion, under the limitation that its freedom be not prohibited.

For if Congress may regulate the freedom of the press, provided they do not abridge it, because it is said only "they shall not abridge it," and is not said "they shall make no law respecting it, "the analogy of reasoning is conclusive that Congress may *regulate* and even *abridge* the free exercise of religion, provided they do not *prohibit* it; because it is said only "they shall not prohibit it," and is *not* said "they shall make no law *respecting*, or no law *abridging* it."

The General Assembly were governed by the clearest reason, then, in considering the Sedition Act, which legislates on the freedom of the press, as establishing a precedent that may be fatal to the liberty of conscience; and it will be the duty of all, in proportion as they value the security of the latter, to take the alarm at every encroachment on the former.

The two concluding resolutions only remain to be examined. They are in the words following:

"That the good people of this Commonwealth having ever felt, and continuing to feel, the most sincere affection for their brethren of the other States, the truest anxiety for establishing and perpetuating the Union of all, and the most scrupulous fidelity to that Constitution which is the pledge of mutual friendship and the instrument of mutual happiness, the General Assembly doth

solemnly appeal to the like dispositions in the other States, in confidence that they will concur with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken by each for co-operating with this State in maintaining, unimpaired, the authorities, rights, and liberties reserved to the States respectively, or to the people.

"That the Governor be desired to transmit a copy of the foregoing resolutions to the executive authority of each of the other States, with a request that the same may be communicated to the Legislature thereof; and that a copy be furnished to each of the Senators and Representatives representing this State in the Congress of the United States."

The fairness and regularity of the course of proceeding here pursued have not protected it against objections even from sources too respectable to be disregarded.

It has been said that it belongs to the judiciary of the United States, and not the State Legislatures, to declare the meaning of the Federal Constitution.

But a declaration that proceedings of the Federal Government are not warranted by the Constitution is a novelty neither among the citizens nor among the Legislatures of the States; nor are the citizens or the Legislature of Virginia singular in the example of it.*

Nor can the declarations of either, whether affirming or denying the constitutionality of measures of the Federal Government, or whether made before or after judicial decisions thereon, be deemed, in any point of view, an assumption of the office of the judge. The declarations in such cases are expressions of opinion, unaccompanied with any other effect than what they may produce on opinion by exciting reflection. The expositions of the judiciary, on the other hand, are carried into immediate effect by force. The former may lead to a change in the legislative expression of the general will—possibly, to a change in the opinion of the judiciary; the latter

enforces the general will, whilst that will and that opinion continue unchanged.

And if there be no impropriety in declaring the unconstitutionality of proceedings in the Federal Government, where can be the impropriety of communicating the declaration to other States, and inviting their concurrence in a like declaration? What is allowable for one must be allowable for all; and a free communication among the States, where the Constitution imposes no restraint, is as allowable among the State governments as among other public bodies or private citizens. This consideration derives a weight that cannot be denied to it, from the relation of the State Legislatures to the Federal Legislature as the immediate constituents of one of its branches.

The Legislatures of the States have a right also to originate amendments to the Constitution, by a concurrence of two-thirds of the whole number, in applications to Congress for the purpose. When new States are to be formed by a junction of two or more States, or parts of States, the Legislatures of the States concerned are, as well as Congress, to concur in the measure. The States have a right also to enter into agreements or compacts, with the consent of Congress. In all such cases a communication among them results from the object which is common to them.

It is, lastly, to be seen whether the confidence expressed by the resolution, that the *necessary and proper measures* would be taken by the other States for co-operating with Virginia in maintaining the rights reserved to the States or to the people, be in any degree liable to the objections which have been raised against it.

If it be liable to objection it must be because either the object or the means are objectionable.

The object being to maintain what the Constitution has ordained, is in itself a laudable object.

The means are expressed in the terms "the necessary and proper measures." A proper object was to be pursued by means both necessary and proper.

To find an objection, then, it must be shown that some meaning was annexed to these general terms which was not proper; and for this purpose either that the means used by the General Assembly were an example of improper means, or that there were no proper means to which the terms could refer.

In the example given by the State of declaring the Alien and Sedition Acts to be unconstitutional, and of communicating the declaration to other States, no trace of improper means has appeared. And if the other States had concurred in making a like declaration, supported, too, by the numerous applications flowing immediately from the people, it can scarcely be doubted that these simple means would have been as sufficient as they are unexceptionable.

It is no less certain, that other means might have been employed which are strictly within the limits of the Constitution. The Legislatures of the States might have made a direct representation to Congress with a view to obtain a rescinding of the two offensive acts; or they might have represented to their respective Senators in Congress their wish that two-thirds thereof would propose an explanatory amendment to the Constitution; or two-thirds of themselves, if such had been their option, might, by an application to Congress, have obtained a Convention for the same object.

These several means, though not equally eligible in themselves, nor, probably, to the States, were all constitutionally open for consideration. And if the General Assembly, after declaring the two acts to be unconstitutional, the first and most obvious proceeding on the subject, did not undertake to point out to the other States a choice among the farther measures that might become necessary and proper, the reserve will not be misconstrued by liberal minds into any culpable imputation.

These observations appear to form a satisfactory reply to every objection which is not founded on a misconception of the terms employed in the resolutions. There is one other,

however, which may be of too much importance not to be added. It cannot be forgotten, that among the arguments addressed to those who apprehend danger to liberty from the establishment of the General Government over so great a country, the appeal was emphatically made to the intermediate existence of the State governments, between the people and that Government; to the vigilance with which they would descry the first symptoms of usurpation; and to the promptitude with which they would sound the alarm to the public. This argument was probably not without its effect; and if it was a proper one then to recommend the establishment of the Constitution, it must be a proper one now to assist in its interpretation.

The only part of the two concluding resolutions that remains to be noticed is, the repetition, in the first, of that warm affection to the Union and its members, and of that scrupulous fidelity to the Constitution, which have been invariably felt by the people of this State. As the proceedings were introduced with these sentiments, they could not be more properly closed than in the same manner. Should there be any so far misled as to call in question the sincerity of these professions, whatever regret may be excited by the error, the General Assembly cannot descend into a discussion of it. Those who have listened to the suggestion can only be left to their own recollection of the part which this State has borne in the establishment of our National Independence, in the establishment of our National Constitution, and in maintaining under it the authority and laws of the Union, without a single exception of internal resistence or commotion. By recurring to these facts they will be able to convince themselves that the Representatives of the people of Virginia must be above the necessity of opposing any other shield to attacks on their national patriotism than their own conscientiousness and the justice of an enlightened public, who will perceive in the resolutions themselves the strongest evidence of attachment both to the Constitution and to the Union, since it is only by maintaining

the different governments and departments within their respective limits that the blessings of either can be perpetuated.

The extensive view of the subject thus taken by the committee has led them to report to the House, as the result of the whole, the following Resolution:

Resolved, That the General Assembly having carefully and respectfully attended to the proceedings of a number of the States, in answer to their resolutions of December 21, 1798, and having accurately and fully re-examined and reconsidered the latter, find it to be their indispensable duty to adhere to the same, as founded in truth, as consonant with the Constitution, and as conducive to its preservation; and more especially to be their duty to renew, as they do hereby renew, their protest against "the Alien and Sedition Acts," as palpable and alarming infractions of the Constitution.

TO THOMAS JEFFERSON. MAD. MSS.

March 15, 1800.

DEAR SIR,—Since my last I have been favored with the following inclosures.—The Bill relating to Electors[1] Ramsay's oration, the Report on ways &

[1] The bill "Prescribing the mode of deciding disputed elections of President and Vice President of the United States" originated in the Senate. It provided that the Senate and House should "on the —— next following the day when a President and Vice President shall have been voted for " each choose four members to form a joint committee with power to examine into all disputes relative to the election of President and Vice President, except such as might relate to the number of votes by which the electors had been chosen. If the two houses on report of the joint committee should concur in rejecting any votes cast for President and Vice President they should not be counted. The bill was amended in the House, passed May 2, again amended by the Senate and finally rejected because of the Senate amendments May 10. *Annals of Cong., 6th Cong.*, 1779–1801, 694, 695, 697, 713.

means, a motion by Bingham, and the resolution for excluding the Judges from other offices.

It is not to be denied that the Const.ⁿ might have been properly more full in prescribing the election of P. & V. P. but the remedy is an amendment to the Const.ⁿ, and not a legislative interference. It is evident that this interference ought to be and was meant to be as little permitted as possible; it being a principle of the Const.ⁿ that the two departments should be independent of each other, and dependent on their Constituents only. Should the spirit of the Bill be followed up, it is impossible to say, how far the choice of the Ex. may be drawn out of the Constitutional hands, and subjected to the management of the Legislature. The danger is the greater, as the Chief Magistrate, for the time being may be bribed into the usurpations by so shaping them as to favor his re-election. If this licentiousness in constructive perversions of the Constitution, continue to increase, we shall soon have to look into our code of laws, and not the Charter of the people, for the form as well as the powers of our Government. Indeed such an unbridled spirit of construction as has gone forth in sundry instances, would bid defiance to any possible parchment securities against usurpation.

I understand that the general ticket law is represented at Phil.ª as generally unpopular. I have no reason to believe this to be the fact. On the Contrary, I learn that the information collected at Richmond on this subject is satisfactory to the friends of the law.

The ground has been covered for six weeks with snow; and there is still a remnant of it. It has given a very unusual backwardness to all the preparations for the ensuing crops, but we hope for some amends from its influence on the winter grain.

TO THOMAS JEFFERSON. MAD. MSS.

April 4, 1800

DEAR SIR

Your favor by M^r. Trist was duly handed to me, since which I have rec^d. the Report on imports under your cover, & yesterday your favor of the 25ult.: accompanied with the Pamphlet & M^r. Nicholas's motion on the Electoral Bill, which appears to be so fair & pertinent, that a rejection of it in favor of any other modification proposed, must fix a new brand on the Authors. The spirit manifested in the Senate steadily, & in the other House occasionally, however mischievous in its immediate effects, cannot fail I think to aid the progress of reflection & change among the people. In this view our public malady may work its own cure, and ultimately rescue the republical principal from the imputation brought on it by the degeneracy of the public Councils. Such a demonstration of the rectitude & efficacy of popular sentiment, will be the more precious, as the late defection of France has left America the only Theatre on which true liberty can have a fair trial. We are all extremely anxious to learn the event of the Election in N. Y. on which so much depends. I have nothing to add to what I have already said on

the prospect with us. I have no reason whatever to doubt all the success that was expected. If it should *fall in your way*, you will oblige me by inquiring whether there be known in Philad[a] any composition for encrusting Brick that will effectually stand the weather: and particularly what is thought of common plaister thickly painted with white lead overspread with sand. I wish to give some such dressing to the columns of my Portico, & to lessen as much as possible the risk of the experiment.

Affectionately Yrs

TO THOMAS JEFFERSON. MAD. MSS.

Oct 21 1800

DEAR SIR

This will be handed you by M[r] Altson of S. Carolina,[1] who proposes to call at Montecello on his return from a Northern tour. He will probably be well known to you by other introductions; but those which he has brought to me, as well as a short acquaintance with him make me feel an obligation to add mine. He appears to be intelligent, sound in his principles, and polished in his manners. Coming fresh from N. Y. through Pen[a] & Maryl[d] he will be able to furnish many details on late occurrences. The fact of most importance mentioned by him & which is confirmed by letters I have from Burr & Gilston, is that the vote of Rho: Island will be

[1] Joseph Allston who married Theodosia, daughter of Aaron Burr.

assured on the right side. The latter gentleman expresses much anxiety & betrays some jealousy with respect to the *integrity* of the Southern States in keeping the former one in view for the secondary station. I hope the event will skreen all the parties, particularly Virginia from any imputation on this subject: tho' I am not without fears, that the requisite concert may not sufficiently pervade the several States. You have no doubt seen the late Paris Statement, as well as the comment on it by observator who is manifestly Hamilton. The two papers throw a blaze of light on the proceedings of our administration & must I think, co-operate with other causes, in opening thoroughly the eyes of the people.

TO THOMAS JEFFERSON. MAD. MSS.

Jany 10, 1801.

DEAR SIR,—Mrs Browne having been detained at Fredg for some time, I did not receive your favor of the 19th in time to be conveniently acknowledged by the last mail. The succeeding one of the 26th came to hand on the 7th instant only, a delay that fixes blame on the post office either in Washington or Fredg. In all the letters & most of the Newspapers which I have lately rec[d] thro' the post office, there is equal ground for complaint.

I find that the vote of Kentucky establishes the tie between the Repub: characters, and conse-

quently throws the result into the hands of the H. of R. Desperate as some of the adverse party there may be, I can scarcely allow myself to believe that enough will not be found to frustrate the attempt to strangle the election of the people, and smuggle into the Chief Magistracy the choice of a faction. It would seem that every individual member, who has any standing or stake in society, or any portion of virtue or sober understandg must revolt at the tendency of such a manœuvre. Is it possible that Mr. A. sh[d] give his sanction to it if that should be made a necessary ingredient? or that he would not hold it his duty or his policy, in case the present House should obstinately refuse to give effect to the Constn, to appoint, which he certainly may do before his office expires as early a day as possible, after that event, for the succeeding House to meet, and supply the omission. Should he disapp[t] a just expectation in either instance, it will be an omen, I think, forbidding the steps towards him which you seem to be meditating. I would not wish to discourage any attentions which friendship, prudence, or benevolence may suggest in his behalf, but I think it not improper to remark, that I find him infinitely sunk in the estimation of all parties. The follies of his administration, the oblique stroke at his Predecessor in the letter to Coxe, and the crooked character of that to T. Pinkney[1], are working powerfully ag[st] him. Added to these causes is the pamphlet of H. which, tho' its

[1] Pickering is meant. See Hamilton's pamphlet in *Works of Hamilton* (Lodge) vi, 391.

recoil has perhaps more deeply wounded the author, than the object it was discharged at, has contributed not a little to overthrow the latter staggering as he before was in the public esteem.

On the supposition of either event, whether of an interregnum in the Executive, or of a surreptitious intrusion into it, it becomes a question of the first order, what is the course demanded by the crisis. Will it be best to acquiesce in a suspension or usurpation of the Executive authority till the meeting of Cong.s in De.r next, or for Congs to be summoned by a joint proclamation or recommendation of the two characters havg a majority of votes for President. My present judgment favors the latter expedient. The prerogative of convening the Legislature must reside in one or other of them, and if both concur, must substantially include the requisite will. The intentions of the people would undoubtedly be pursued. And if, in reference to the Const.n, the proceeding be not strictly regular, the irregularity will be less in form than any other adequate to the emergency; and will lie in form only rather than substance; whereas the other remedies proposed are substantial violations of the will of the people, of the scope of the Constitution, and of the public order & interest. It is to be hoped however that all such questions will be precluded by a proper decision of nine States in the H. of R.

I observe that the French Convention is represented as highly obnoxious to the Senate. I should not have supposed that the opposition would be

hinged on the article surrendering public vessels. As the stipulation is mutual it certainly spares our pride, sufficiently to leave us free to calculate our interest, and on this point there cannot be a difference of opinion. I was less surprized at the obstacle discovered in the British Treaty, the latter of which combined with the repeal of the French Treaty, beget a suspicion that in some quarters at least the present posture of things has been long anticipated. It is certain however that the Convention leaves G. B. on a better footing than the B. Treaty placed her, and it is remarkable that E.[1] D.[2] & Murray, should have concurred in the arrangement, if it have any real interference with bona fide engagements to G. B. It may be recollected that the privilege given to British prizes was not purchased like that to French prizes, by any peculiar services to us; and never had any other pretext, than the alledged policy of putting the two great rival nations of Europe as nearly as possible on an equal footing. Notwithstanding this pretext for the measure, H. in his late pamphlet acknowledges the error of it. It would be truly extraordinary if a measure intended for this equalizing purpose, should be construable into an insuperable barrier to the equality proposed. It is of vast moment both in a domestic & foreign view, that the Senate should come to a right decision. The public mind is already sore & jealous of that body, and particularly so of the insidious & mischievous policy of the British Treaty. It is strongly

[1] Ellsworth. [2] Davie.

averse also to war, and would feel abhorrence of an unjust or unnecessary war with any nation. It is much to be wished that these facts may not be disregarded in the question before the Senate. If there be anything fairly inadmissible in the Convn it would be better to follow the example of a qualified ratification, than rush into a provoking rejection. If there be anything likely, however unjustly, to beget complaints or discontents on the part of G. B. early & conciliatory explanations ought not to be omitted. However difficult our situation has been made, justice & prudence will it is hoped, steer us through it peacefully. In some respects the task is facilitated at the present moment. France has sufficiently manifested her friendly disposition, and what is more, seems to be duly impressed with the interest she has in being at peace with us. G. B., however intoxicated with her maritime ascendency is more dependent every day on our commerce for her resources, must for a considerable length of time look in a great degree to this Country, for bread for herself, and absolutely for all the necessaries for her islands. The prospect of a Northern Confederacy of Neutrals cannot fail, in several views, to inspire caution & management towards the U. S. especially as, in the event of war or interruption of commerce with the Baltic, the essential article of naval Stores can be sought here only. Besides these cogent motives to peace and moderation, her subjects will not fail to remind her of the great pecuniary pledge they have in this Country, and which under any interruption

of peace or commerce with it, must fall under great embarrassments, if nothing worse.—As I have not restrained my pen from this hasty effusion, I will add for your consideration one other remark on the subject. Should it be found that G. B. means to oppose pretensions drawn from her Treaty, to any part of the late one with F. may she not be diverted from it, by the idea of driving us into the necessity of soothing France, by stipulations to take effect at the expiration of the Treaty with G. B. and that w^d^ be a bar to the renewal of the latter. Or in case the pretensions of G. B. should defeat the Treaty now before the Senate, might not such an expedient be made a plaister for the wound given to F?

My health still suffers from several complaints, and I am much afraid that any changes that may take place are not likely to be for the better. The age and very declining state of my father are making also daily claims on my attention, and from appearances it may not be long before these claims may acquire their full force. All these considerations mingle themselves very seriously with one of the eventual arrangements contemplated. It is not my purpose however to retract what has passed in conversation between us on that head. But I cannot see the necessity, and I extremely doubt the propriety, should the contest in hand issue as is most probable, of my anticipating a relinquishment of my home. I cannot but think, & feel that there will be an awkwardness to use the softest term, in appearing on the political Theatre before I could be considered as

regularly called to it, and even before the commencement of the authority from which the call would proceed. Were any solid advantage at stake, this scruple might be the less applicable, but it does not occur that the difference of not very many days, can be at all material. As little can I admit that the circumstance of my participation in the Ex. business, could have any such effect on either the majority or minority as has occurred; or if a partiality in any particular friends could be gratified by a knowledge of such an arrangement, that the end would not be as well attained by its being otherwise made known to them that it was to take place, as by its being announced by my appearance on the spot. I only add that I am sensible of the obligation of respecting your conclusion whatever it may finally be, but I cannot but hope that it may be influenced by the considerations which I have taken the liberty to hint.

You may recollect a difficulty suggested in mak^g^ app^ts^ with^t^ a Senate, in case of resignations *prior to March* 4. How have you solved it?

TO THOMAS JEFFERSON. MAD. MSS.

February 28, 1801.

DEAR SIR,—Your favor of the 1st instant was to have been acknowledged a week ago, but the irregularity of the post occasioned by high waters has delayed it to the present opportunity. I have now to acknowledge your two subsequent ones of the 12th &

19th. In compliance with the last, I had proposed to leave home in a few days, so as to be with you shortly after the 4th of March. A melancholy occurrence has arrested this intention. My father's health for several weeks latterly seemed to revive, and we had hopes that the approach of milder seasons would still further contribute to keep him with us. A few days past however he became sensibly worse, and yesterday morning rather suddenly, tho' very gently the flame of life went out. It is impossible for me now to speak of my movements with precision. Altho' the exact degree of agency devolving on me remains to be known, a crowd of indispensable attentions must necessarily be due from me. In this posture of things I can only say that I shall wait the return of the post after this reaches, by which I hope to learn whether your intended continuance at Washington will admit, and the state of things will require, my being there before you leave it. By this information I shall be governed, unless imperiously controuled by circumstances here.

The conduct of M^r^ A. is not such as was to have been wished or perhaps, expected. Instead of smoothing the path for his successor, he plays into the hands of those who are endeavoring to strew it with as many difficulties as possible; and with this view does not manifest a very squeamish regard to the Const^n^ Will not his app^ts^ to offices, not vacant actually at the time, even if afterwards vacated by acceptances of the translations, be null?

The result of the contest in the H. of R. was gener-

ally looked for in this quarter. It was thought not probable that the phalanx would hold out agst the general revolt of its partizans out of doors & without any military force to abet usurpation. How fortunate that the latter has been withheld: and what a lesson to America & the world, is given by the efficacy of the public will when there is no army to be turned agst it!

I observe that a Com^{e} is app^{d} to enquire into the effects of the late fires[1] This is no doubt proper; but does not I think promise much. More is to be expected from the scrutinies of honest heads of Dep^{ts}, aided by the documents & other evidences which they will have time & the best means of examining. I take for granted one of the first steps of the new adm^{n} will be to institute returns, particularly in the Navy & war dep^{ts}, of the precise state in which every circumstance involved in them, comes into the new hands. This will answer the double purpose of enabling the public to do justice both to the authors of past errors & abuses and the authors of future reforms.

I rec^{d} a few days ago the inclosed letter from Mr. Page. Altho' there are parts of it, which might well be omitted in the transmission to you, yet the length of the proper extracts tempts me to shun the trouble of making them. In justice to Doc^{r} Tucker,

[1] There was a fire in the War Department November 8, 1800, and in the Treasury Department January 20, 1801. The Republicans at once charged that they were incendiary. For the report of the committee of inquiry see Gibbs's *Administrations of Washington and Adams*, ii, 478, *et seq.*

I say with pleasure, that I have always regarded him as a man of the greatest moral & political probity, truly attached to Republican principles, of a very ingenious mind, extensive information, & great exactitude in his ideas & habits of business; and, consequently well fitted for public service.—The letter from Callendar seems from its contents to have been meant for you, tho. superscribed to me.

TO JAMES MONROE. MAD. MSS.

May 6, 1801.

Dear Sir

M^r Camp handed me yesterday your two favors of the 11 & 12 of March. I can say nothing determinate as to the prospect of him & M^r Lambert, because I do not yet know what arrangements may be contemplated throughout the Departments. I think however it would be unwise in any of the Candidates to neglect other resources: the number of them being such as greatly to reduce the chance to individuals, & it being not improbable that in some of departments at least the number of offices themselves may be reduced I have not yet rec^d your letter for Chancel^r Livingston nor the letter from Mr. Skipwith to which you refer. He will not embark on his foreign Mission till the ratification of the Treaty in France arrives here.

Callender I find is under a strange error on the subject of his fine, and in a strange humor in con-

sequence of it.[1] I inclose an open letter for him which you will please to read & forward. How has the delay in giving effect to the remission of the fine happened? It ought to be known & explained to him. What I state to him as the view of the President I have from the P. himself, & therefore cannot be mistaken in.

I have been here a few days only & can say nothing to you from the Department. I find myself in the midst of arrears of papers &c &c, which little accord with my unsettled health.

TO JAMES MONROE. MAD. MSS.

WASHINGTON June 1, 1801

DEAR SIR,—I have recd your favor of the 23dUlt: Callendar made his appearance here some days ago in the same temper which is described in your letter. He seems implacable towards the principal object of his complaints and not to be satisfied in any respect without an office. It has been my lot to bear the burden of receiving & repelling his claims. What feelings may have been excited by my plain dealing with him I cannot say, but am inclined to think he has been

[1] James Thompson Callender was sentenced in the spring of 1800 under the sedition law to nine months' imprisonment and to pay a fine of $200. This law Jefferson considered to be "a nullity" and Callender, being released about the time Jefferson's administration began, conceived that the fine should be reimbursed him. Callender threatened the President, and Monroe seemed to be in great fear of him. He came to Washington in June, 1801, and confided everything to Madison, for whom he entertained great regard. *Life of Madison* (Hunt), 278 *et seq.*

brought by it to some reflections which will be useful to him. It is impossible however to reason concerning a man, whose imagination & passions have been so fermented. Do you know too, that besides his other passions, he is under the tyranny of that of *love*. Strange as it may appear, this came out, under a charge of *secrecy*, in a way that renders the fact unquestionable. The object of his flame is in Rich.d I did not ask her name; but presume her to be young, beautiful in his eyes at least, and in a sphere above him. He has flattered himself & probably been flattered by others into a persuasion that the emoluments & reputation of a post office would obtain her in marriage. Of these recommendations however he is sent back in despair. With respect to the fine, even, I fear that delays, if nothing more may still torment him & lead him to torment others. The case stands thus. Randolph, had sent on, but not settled his accounts, in which there was a credit to the U. S. for the am.t of the fine. In settling the Acc.t the credit is struck out, & the Controller has notified him, that the 200 dollrs are to be paid to Callander. Whether he will do it without a suit, is the question. If he will not, and the result can be anticipated, in any way, it will be fortunate, as Callendar's irritation produced by his wants, is whetted constantly by his suspicion that the difficulties, if not intended, are the offspring of indifference in those who have interposed in his behalf. I cannot but hope that the late Marshall will see the propriety of not opposing the order of the Treasury

Dep^{t}. There was certainly no pretext for his refusal at all to refund the money, as I understand his own statement leaves him a debtor of ab^{t} 1,660 drs, & that of the Treasury Dep^{t} ab^{t} 2,500 drs to the U. States.

You see by the papers that our Mediterranean trade is in jeopardy if not attacked, and that the arrears of stipulated remittances are urged as the ground of complaint. Whether this be or be not more than a pretext, it is certainly extraordinary that the arrears sh^{d} have been suffered so to accumulate. From Europe in general we hear little more than what you see in print. It is said that Portugal is presented with the alternative of shutting her ports vs G. B. & receiving a F. or Spanish Garrison, or of being annexed & guarantied as a province of Spain. The legations to that Country & Batavia are to be abolished. The letters &c., for the purpose to go to Smith & Murray, will be ready for the signature of the P. on Monday.

Intelligence has come thro' several channels which makes it probable that Louisiana has been ceded to France. This is but little wonderful considering the calculations, into which F. has been led by the transactions for several years back. You will readily view this subject in all its aspects. If any ideas occur on it that can be of service, favor me with them.

Remind Mr. Randolph if you please, that I have never yet heard from him in answer to my enquiries on several points—particularly the practicability and method of getting sold a partnership Mill of

value. I understand it is doubted by some lawyers in Rich^d (Mr. Wickham probably) whether a suit will effect it, as long as the separate property of the partners is sufficient. I am afraid the delay has already diminished the chance of an advantageous sale, should a decree be obtainable.

Mrs. M. joins me in the most respectful salutations to Mrs. Monroe & yourself.

TO RUFUS KING.[1] D. OF S. MSS. INSTR.

DEPARTMENT OF STATE WASHINGTON 15TH June 1801.

SIR:

Your communications by Mr. Sitgreaves on the subject of the proposed conversion of the claims against the United States, under the 6th Article of the Treaty of 1796 into a definite sum, have been duly received and taken into consideration by the President. Although there may be good ground to contest the real justice of the amount of debt which will be assumed by such a stipulation, yet considering all the actual circumstances, which are now to be taken into view; allowing particularly due weight to the advantage of substituting an amicable and final adjustment of the controversy, in place of the apparent improbability of obtaining any proper amendment of the 6th article, and of all the demands embarrassments and uncertainties incident to its present form, before a tribunal composed as is the board of commissioners under it, the President has determined on the expediency of your pursuing into effect the negociation in which you are engaged. It is his express instruction, however, that no encouragement be given to pretensions on the British side, by carrying into the negociation a sum higher than that of six

[1] Minister to England. Madison assumed office as Secretary of State May 2, 1801.

hundred thousand pounds, as mentioned in your No. 6, of the 7th of March last, and that no sum beyond that be finally admitted into the commutation.

It is taken for granted that in case the claims against the United States be liquidated into a net sum, there will be no difficulty in so arranging it as to be applicable to the payment of the indemnification, awarded from time to time, under the seventh article of the Treaty, in favor of our citizens, whose claims according to an estimate of Mr. Samuel Cabot of May 9th 1798, amount to £1,250,000. Such an arrangement must be the less objectionable, as a discharge of the debt by instalments would no doubt be the alternative mode, and it will have the advantage of putting aside all possible inducements to delay the award of indemnifications, with a view to avoid the immediate advances of money necessary to satisfy them.

The President considers it as a matter of course also, that an adjustment of the controversies under the 6th article will be followed by an instant renewal of the proceedings under the seventh article, and by every reasonable exertion for hastening them to a just conclusion.

A number of your letters hitherto received remain to be acknowledged. But the subject of the dispatches by Mr. Sitgreaves has appeared to claim an answer, distinct, and without delay. I cannot but briefly add, however, that we have the mortification to find that notwithstanding all the forbearances and endeavors of the United States, for the establishment of just and friendly relations with Great Britain, accounts continue to arrive from different quarters, of accumulating trespasses on our commerce and neutral rights. This is particularly the case not only with respect to the Bahama Islands, but to Jamaica. Mr. Savage under date of 11th April last, states that "since the 15th January, thirty vessels which appear to be American property have been detained and brought into this port, and from the best information I have been able to obtain from several Masters, their value has been computed by me at the enormous sum of seven

hundred and sixteen thousand dollars, some few have been acquitted after being decreed to pay both Relators and Defendants costs, which upon the smallest calculation is never less than fifteen hundred dollars and in some instances three times that sum."

It will be an agreeable circumstance if the result of your correspondence with the British Ministry shall be found to mitigate these outrages, it being the sincere desire of the United States, and of the government to see every obstacle removed to that entire confidence and harmony and good will between the two countries, which can be firmly established on no other foundations than those of reciprocal justice and respect.[1]

With very great respect, I have &c.

[1] TO WILSON C. NICHOLAS.[2]

WASHINGTON, July 10, 1801.

MY DEAR SIR,—I cannot at so late a day acknowledge your two favors of [blank] without an explanation, which I am sure your goodness will accept as an apology. Having brought with me to this place a very feeble state of health, and finding the mass of business in the department, at all times considerable, swelled to an unusual size by sundry temporary causes, it became absolutely necessary to devote the whole of my time & pen to my public duties, and consequently to suspend my private correspondences altogether, notwithstanding the arrears daily accumulating. To this resolution I have thus far adhered. I must now endeavor to make some atonement for the delay, and your case is among the first that is suggested both by obligation & inclination.

That one of your letters which is confidential has been imparted to no person whatever. The P. O. Genl. continues in the hands of Col. H., who, though not perhaps sufficiently in the views of the administration, is much respected personally, & is warmly espoused politically also by some of the purest and most weighty of our friends.[3] It will be difficult to make a satisfactory arrangement for this debt that will not involve transaltions, &c., which will prevent a real vacancy. Besides this, I am inclined to believe that the P. would be afraid to

[2] From *Mass. Hist. Collections*, Seventh Series, vol. i, p. 96. (Coolidge Collection of Jefferson Papers.)

[3] Joseph Habersham was Postmaster General until the latter part of 1801, when he was succeeded by Gideon Granger of Connecticut.

TO RUFUS KING. D. OF S. MSS. INSTR.

WASHINGTON DEPARTMENT OF STATE 24th July 1801

SIR:

My letter of the 15th of June acknowledged the receipt of your communciations of April 20th and 21st by Mr. Sitgreaves. Your several favors received prior to that date and since and not acknowledged complete your new series including No. 16 with the addition of No. 19.

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draw on Virga agst competitions which wd. abound from other States. The individual spoken of by you would, as you must be well assured, be perfectly desired as an associate in the public business, on every consideration, unless it be on that of robbing another important station of his services.

Little has occurred which you have not found in the newspapers. The task of removing and appointing officers continues to embarrass the Ex. and agitate particular parts of the Union. The degree, the mode, & the times of performing it are often rendered the more perplexing by the discord of information & counsel received from different persons whose principles & views are the same. In Connecticut the fever & murmur of discontent at the exercise of this power is the greatest. The removal of Goodrich & appt. of a respectable repuln. have produced a *remonstrance* to the President in the strongest terms that decorum would tolerate. The spirit in that State is so perverse that it must be rectified by a peculiar mixture of energy and delicacy. The Secyship of the Navy is still unfilled, Langdon havg. lately sent his final refusal. The P. has just offered it to Mr. Robt. Smith, who we hope will be prevailed on to take it.

Our news from abroad have not yet decided the fate of Egypt or furnished any sufficient data for calculating it. It is believed the Emperor Alexander will endeavor to keep at peace both with France & G. B., & at the same time not abandon the principle of the Coalition. This can only be done by mutually winking at mutual violations of their respective claims.

It is believed, or rather directly asserted by a consul just returned from St. Domingo, that Toussaint will proclaim in form the independence of that island within 2 or 3 weeks. This event presents many important aspects to the U. S., as well as to other nations, which will not escape your eye. Lear[1] had not arrived there when the above

[1] Tobias Lear was on his way to Santo Domingo at the time, having been appointed General Commercial Agent May 11, 1801.

Having already communicated to you the decision of the President with regard to the proposed commutation of the claims against the United States under Art VI of the Treaty of 1794, into a nett sum of six hundred thousand pounds sterling I have nothing new to add on that subject beyond my wishes that the negotiation may be brought to a speedy as well as a final issue. Your letter of May 30th the last one received countenances such an expectation more than the preceding appearances. There is notwithstanding too much room to remark that with due allowances for other pressures on the attention of the British government, a due share of it has not been given to a subject which they profess to consider of so much importance to that good understanding between the two countries, which they also profess to have so severely at heart.

But if complaint be justifiable for the delays attending the proposed liquidation of the debts, on which a difference of opinion, and a tedious discussion were to be apprehended, what must be thought of the difficulties and delays thrown in the way of other subjects; some of them acknowledged to be just in the precise form given to them, others unsusceptible of any specious controversy; and others of a nature and magnitude

person came away. We are impatient for the information which may be expected from him.

You have probably heard the rumour of a cession of Louisiana to France by a late & latent treaty with Spain. The fact is not authenticated, but is extremely probable. If otherwise not probable, it is rendered so by the apparent policy of counteracting the Anglicism suspected in the Atlantic States & the alarm excited by Blount's affair of some combined project to throw that country into the hands of G. B. The subject engages our attention, and the proceedings deemed most suited to the complexity of the case, and the contrariety of interests & views involved in it, will be pursued. It may be inferred, I think, that if France becomes possessed of this object, her policy will take a shape fitted to the interests and conciliatory to the minds of the Western people. This and the preceding paragraph need not be of promiscuous use. I hope to leave this place within two weeks, or thereabouts, being admonished to hasten it by a late slight attack of bile to which my constn. is peculiarly prone.

to make the most trying appeal to the interests and sensibility of the United States.

By your letter of March 10th 1800, it appears that the proposition for explaining the list of contraband of war contained in the XVIII Art. of the Treaty, and thereby instigating the vexations of our lawful commerce under the pretext of that article, tho' admitted as early as the summer of 1799, after full examination and minute discussion, to be in a form proper to be adopted has not even yet carried into effect, nor is it known that any adequate measures have been taken to arrest or redress the abuses.

The Articles proposed to be added to the Treaty for placing our vessels trading in the Mississippi under the same security with our other coasting vessels and declaring that neither party shall impress on the high seas, seamen out of vessels of the other, tho' resting on such solid grounds of reason, and the latter so acknowledged by Lord St. Vincent himself, and though known to have been for many years a source of peculiar irritation in this country, have neither of them been formally stipulated or practically enforced.

Even the proposed removal of the obstacles of form to the restitution of the Maryland Bank Stock, a measure prescribed by the clearest obligations of moral and legal right, has experienced all the procrastination incident to the most doubtful and intricate topics of negotiation.

Adding to these considerations, the perseverence of the British Government in not effectually controlling the depredations on our commerce, the immence amount of the depredations, the violations of all principal, rule, and decorum in many of their subordinate Tribunals, the difficulties, delay, and ruinous expense of seeking redress in the higher ones, the numerous instances in which insult has been added to injury, during the seizures and condemnations of our vessels; adding again the number and manner of impressments committed on American Seamen, native as well as naturalized, with their protections in their hands, and on neutral aliens voluntarily

engaged in the service of our vessels, together with the long period thro' which this enormity, as well as that of the depredations on our commerce, has been suffered to go on, in spite of all the arguments expostulations, and remonstrances which have been opposed to them; adding finally, that this mass of injustice and aggression has fallen on a nation whose proceedings towards the British nation and government have been regulated by the most faithful attention both to the stipulations arising from its neutral character; which [is] acknowledged by that government to have furnished no just topic for reproach or complaint; which is felt and admitted also to be the greatest consumer of British exports the most valuable source of those raw and bulky materials, which employ both their manufacturers and the navigation, in fact in all senses, the best customer, and latterly the fund in a great measure of the necessaries of life to themselves, as it must be at all times to a great part of their dependent dominions; all these considerations thrown into one view make it difficult to decide whether the greater wonder ought to be exacted by the steady course of rectitude observed on the part of the United States, or the wanton abuses of power on the part of Great Britain, by the unexampled patience of the former or the unpolitic experiment made on it by the latter.

To give full force to these remarks it would be requisite to state the precise extent of the two principal injuries viz: the spoliations on our trade, and the impressment of our seamen. The materials however in this office give a more limited information on the first of these, than such as are probably in your hands or within your reach. The value of the property unlawfully seized and condemned since the Treaty of 1794, and consequently in violation of that Treaty, must amount at a moderate computation to some millions of dollars.

The imperfect lists of impressed seamen which have been obtained by our Agents and reported to this Department swell the number to near two thousand, more than four fifths

of whom are natives of the United States, not more than seventy are British subjects, and more than seventy Aliens both to Great Britain and the United States, and consequently so distinguishable by the language and other signs as to take away all color of apology for the outrage. Of the whole number of seamen thus deprived of their rights and forced into the hardships and dangers of a foreign service in time of war, about one third only have been set at liberty; notwithstanding the time, the pains and the expense which have been used for that purpose by their country.

Examples might be multiplied, both of depradations and impressments, showing also in the strongest manner that the extent of them is not the only offensive light in which they are to be viewed. Your own recollection and researches can readily supply these examples. You will find several of the first kind in the hands of Mr. Williams referred to him by the Consul at Lisbon. In relation to impressments it will not be improper to cite a very marked instance which has lately been transmitted. By a letter from Mr. Smith the Minister Plenipotentiary of the United States at Lisbon it appears "that on the night of the 7th April last, between the hours of 11 & 3 oclock three American vessels were boarded while at anchor in that Harbour, by a boat belonging to the British frigate Diana, Captain Stephenson, manned by an officer and several men, who armed with pistols and drawn cutlasses after committing sundry acts of outrage and menacing the lives of unarmed men in their beds, forcibly pressed and carried away a seaman from one of the said ships."

It is to be observed that in aggravation of this atrocious assault, it was made during the middle of the night, within the jurisdiction of a friend both to Great Britain and the United States, that it proceeded from a ship of war, commanded by a commissioned officer, and was executed by a party headed by an officer: A greater indignity could scarcely be offered to the United States or to Portugal, or a more flagrant outrage to individuals. It is indeed said that the Captain of the Frigate

disclaimed all knowledge of the transaction: But have the real authors of it been brought to punishment? Has the unfortunate seaman been restored? An apology without these satisfactions is a mockery and nothing more. As it appears by Mr. Smith's letter to the Department of State, that you have been furnished with an account of this atrocity, it is not doubted that you will have presented it in its true light to the British Government and as the fact is so precise and so indisputable, and the officers can be so easily identified, it would be but a reasonable reliance that instant trial and punishment must have ensued, if the inefficacy of demands on the justice of the British Government on such subjects, had not so much familiarized the United States to disappointment.

The complaints daily arriving at this office show that our mariners are impressed without the least respect for their legal protections, certified, in the most authentic forms; that after impressment they are often menaced or maltreated into enlistments, and then (in direct contradiction to the principle on which British seamen voluntarily engaged on board American vessels are taken off as British subjects) claimed as regular members of British crews, that they are in fine, not only subject to the discipline and dangers of the foreign service, but exposed to be made prisoners by the powers at war with Great Britain, and involved with British subjects in all the calamities of that situation.

Of this last fact the following proof is selected out of a number that might be produced, because being the last received it is the first that offers itself, and because it includes a very singular aggravation of the original tresspass.

Mr. Mountflorence writes from Paris on the 15th of April 1801 "that many of our seamen are daily captured on board English vessels by French cruisers, and brought into the ports of France. The British Commissary of Prisoners of war here had constantly claimed such American sailors as English, to have them exchanged as such. These Americans being put on board of a Cartel, were not suffered to land on their arrival

in a British port, but were immediately taken on board some tender and carried to the nearest English man of war By these means these poor fellows were deprived of the possibility of making their cases known to our Agent for seaman in London. Such at least is the information given me by some sailors."

It cannot be pleaded that the seamen in question were taken in vessels where they had entered voluntarily. These instances if they exist at all are so few that the supposition cannot be admitted. Nor does it mitigate the wrong on the part of Great Britain, that they have suffered another wrong from the French Republic in not being set at liberty on arriving within its jurisdiction, according to the law and practice of nations. A redress of the latter wrong will be pursued, thro' the Minister Plenipotentiary, who is shortly to go to that country and with the less doubt of success as Mr. Mountflorence says, that an interposition in his ex-official character has obtained the discharge of a number of our seamen mingled with British prisoners.

It has been felt as a duty to the public rights, and also as a just respect to the public sensibility, not to pass lightly over the spoliations and impressments which the British Government has so long authorized or tolerated. Hitherto, the patience here has been nourished by a hope that right and reason would by degrees be consulted by power, or at least that peace might quickly close the scene of its abuses. This hope has not lost altogether its influence. But it is proper to be known that the wrongs have made a deep impression on the American mind, and that if no satisfactory change of conduct be soon apparent, and the war be likely to go on, the policy of this Country, can scarcely fail to take some shape more remedial than that hitherto given to it. Should any necessity of this sort be imposed, the inconvenience which may result from it cannot in any degree be chargeable to the United States. The desire not being more than the same respect for their rights which they scrupulously pay to the rights

of Great Britain. They have manifested every disposition to cultivate good will and liberal intercourse between the two Countries. The sacrifices made to this disposition are indubitable proofs of its sincerity. The President wishes it to be understood, that his disposition is in perfect concurrence with that of the community, and that every proper demonstration of it, will be found in the course of his administration. At the same time he equally wishes it to be understood and impressed, that whilst nothing is necessary on the part of Great Britain to the establishment of a thorough and lasting cordiality in the United States but a return of the justice and respect of which they offer the example it is not less certain, that without such a return, their cordiality must not be expected to be either entire or lasting.

I had written thus far when your letters of May 15 and 19 and June 1 came to hand, all at the same time. The contents of them, tho' much is left to be done, for the removal of our complaints, especially on the subject of our seamen, afford very great and sincere pleasure.

If the measures for suppressing the licentious proceedings of the Cruisers and Courts in the West Indies, be carried into full effect, they will cut off no inconsiderable source of the ravages on our trade. It is somewhat apprehended however, that the orders may be evaded as heretofore, whilst the present establishment of Courts continues, and that the tediousness of the parliamentary reform of these may conspire with the lateness of its date, to afford a long period for the harvest of abuses, and to shorten that within which they are to be corrected. Nevertheless it is of great importance in every view, that your endeavors should not be relaxed in urging all these measures of reform. The amendments which you have suggested to the Bill introduced into the House of Commons seem well calculated to render it more effectual, and consequently more conciliatory, and will on both accounts improve its character. As the British Government has now repeatedly and so solemnly disavowed the principle on which so many

condemnations have been made to the West Indies, it may be reasonably expected that it will provide a summary and complete redress for the individuals injured by them. In most of the cases, the principle of condemnation is expressed in the sentence and removes all difficulty, and when this has been omitted it will not be difficult to deduce it from the libel or other circumstances of the case. You will conform to the injunctions of the President by pursuing this object with the attention which is due to the parties interested. Whenever it shall be known that a summary provision has been assented to, this Department will give all the assistance it can, towards extending the benefit of it to the individual claimants. The removal of Admiral Parker, and Captain Pellen from the American station, and on the grounds assigned for it, is another indication of a juster policy towards the United States which deserves to be acknowledged.

No time was lost in presenting more particularly to the attention of the President, your letter of June 1st stating the interview with Lord H. in which he communicated to you for the information of the President, the orders given at the British ports in the Mediterranean, in favor of the American squadron sent into that sea. The President has received this communication with a lively satisfaction, and charges you to assure his British Majesty, that he feels all the value of the good offices he has been pleased to interpose, both as they afford a seasonable accommodation to the little squadron dispatched for the protection of our Mediterranean Trade, and as they are a pledge of those friendly sentiments and that liberal policy which the United States sincerely wish to be reciprocal and perpetual between the two nations.

The cession of Louisiana from Spain to France, as intimated in your letter of 29 March had been previously mentioned from several quarters, and has since been repeated from others as an arrangement believed to have taken place. Although no official or regulation confirmation of the fact has been received, it is more than a probability and has been the

subject of instructions to Mr. Pinckney the Minister of the United States at Madrid, as it will also be to Mr. Livingston the Minister going to Paris. They will both make use of the proper [means] to prevent a change of our Southern neigbours, that is to say the means of peace and persuasion. Should Great Britain interpose her projects also in that quarter, the scene will become more interesting, and require still greater circumspection on the part of the United States. You will doubtless be always awake to circumstances which may indicate her views, and will lose no time in making them known to the President. Considering the facility with which her extensive Navy can present itself on our part, that she already flanks us on the North, and that if possessed of Spanish countries contiguous to us, she might soon have a range of settlements in our rear, as well as flank us on the South also, it is certainly not without reason that she is the last of Neighbours that would be agreeable to the United States.

It will be agreeable and may be useful for you to know that the Seasons on which our summer harvests depended have been unaccountably favorable, and particularly the crops of Wheat throughout the United States are estimated to exceed by one half the produce of any preceding year, at the same time, that the quality is uncommonly excellent.

With sentiments &c.

TO CHARLES PINCKNEY.[1] D. OF S. MSS. INSTR.

WASHINGTON, DEPARTMENT OF STATE,
October 25th, 1801.

SIR:

In the instructions, accompanying your Commission, it was not forgotten, that the trespasses of Spain on our commerce had laid the foundation for strong complaints and reclamations on the part of the United States; and it was accordingly made your duty to press them in a proper manner on the Span-

[1] Minister to Spain.

ish Government. As this violation of our neutral rights prevailed most during the misunderstanding between the United States and the French Republic, and was generally marked under, or confounded with the Commission and flag of the latter it was hoped that with the termination of that misunderstanding, would have terminated also the abuses which Spain had permitted her subjects to connect with it. By the documents hereto annexed consisting of a letter from the President of the Insurance Company of North America, a memorial from the Chamber of Commerce of Philadelphia, a letter from Thomas Fitzsimons Esq. and several private letters from the Captains and Supercargoes of the captured vessels, you will find that instead of fulfilling this reasonable hope, the predatory cruizers from the port of Algeciras have assumed a recent activity peculiarly alarming to our merchants. American property to a very heavy amount has already been a prey to the Spanish Gun boats from that asylum, and it is justly apprehended from the extent of our commerce flowing thro' the same channel, that a still greater portion of it will be exposed to the same fate. This apprehension is the greater, as the general disarming of our merchantmen, produced by the reconciliation with France, removes the check heretofore given to the predatory boats by the means of resisting their enterprizes.

The pretext for the seizure of our vessels seems at present to be, that Gibraltar has been proclaimed in a state of Blockade, and that the vessels are bound to that port. Should the proceeding be avowed by the Spanish Government, and defended on that ground, you will be able to reply.

1st That the proclamation was made as far back as the 15th of Feby 1800, and has not since been renewed; that it was immediately protested against by the American and other neutral Ministers at Madrid, as not warranted by the real state of Gibraltar, and that no violations of neutral commerce having followed the proclamation, it was reasonably concluded to have been rather a menace against the enemies of Spain,

than a measure to be carried into execution against her friends.

2nd That the State of Gibraltar is not and never can be admitted by the United States to be that of a real blockade. In this doctrine they are supported by the law of Nations as laid down in the most approved Commentators, by every Treaty which has undertaken to define a blockade, particularly[1] those of latest date among the maritime nations of Europe, and by the sanction of Spain herself, as a party to the armed neutrality in the year 1781. The spirit of Articles XV and XVI of the Treaty between the United States and Spain, may also be appealed to as favoring a liberal construction of the rights of the parties in such cases. In fact this idea of an investment, a seige or a blockade, as collected from the authorities referred to, necessarily results from the force of those terms; and though it has been sometimes grossly violated or evaded by powerful nations in pursuit of favorite objects, it has invariably kept its place in the code of public law, and cannot be shown to have been expressly renounced in a single stipulation between particular nations.

3d That the situation of the naval force at Algeciras in relation to Gibraltar has not the shadow of likeness to a blockade as truly and legally defined. This force can neither be said to invest, besiege or blockade the Garrison, nor to guard the entrance into the port. On the contrary the gun boats infesting our commerce have their stations in another harbour separated from that of Gibraltar by a considerable Bay; and are so far from beleaguering their enemy at that place, and rendering the entrance into it dangerous to others, that they are, and ever since the proclamation of a blockade, have been, for the most part kept at a distance by a superior naval force which makes it dangerous to themselves to approach the spot.

4th That the principle on which the blockade of Gibraltar is asserted, is the more inadmissible, as it may be extended to

[1] See late Treaties between Russia & Sweden & between Russia and Great Britain. (Note in the original.)

every other place in passing to which vessels must sail within the view and reach of the armed boats belonging to Algeciras. If because a neutral vessel bound to Gibraltar can be annoyed and put in danger by way-laying cruizers, which neither occupy the entrance into the harbour nor dare approach it, and by reason of that danger is liable to capture, every part of the Mediterranean coasts and islands, to which neutral vessels must pass thro' the same danger, may with equal reason be proclaimed in a state of blockade, and the neutral vessels bound thereto made equally liable to capture; or if the armed vessels from Algeciras alone, should be insufficient to create this danger in passing into the Mediterranean, other Spanish vessels co-operating from other stations, might produce the effect, and thereby not only blockade any particular port, or the ports of any particular nation, but blockade at once a whole sea, surrounded by many nations. Like blockades might be proclaimed by any particular nation enabled by its naval superiority to destribute its ships at the mouth of the same, or any similar sea, or across channels or arms of the sea, so as to make it dangerous for the commerce of other nations to pass to its destination. These monstrous consequences condemn the principle from which they flow, and ought to unite against it every nation, Spain among the rest, which has an interest in the rights of the sea. Of this Spain herself appears to have been sensible in the year 1780, when she yielded to Russia ample satisfaction for seizures of her vessels made under the pretext of a general blockade of the Mediterranean, and followed it with her accession to the definition of a blockade contained in the armed neutrality.

5th That the United States have the stronger ground for remonstrating against the annoyance of her vessels on their way to Gibraltar, inasmuch as with very few exceptions, their object is not to trade there for the accommodation of the Garrison, but merely to seek advice or convoy for their own accommodation in the ulterior objects of their voyage. In disturbing their course to Gibraltar, therefore, no real detri-

ment results to the enemy of Spain, whilst a heavy one is committed on her friends. To this consideration it may be added that the real object of a blockade is, to subject the enemy to privations, which may co-operate with external force compelling them to surrender; an object which cannot be alleged in a case, where it is well known that Great Britain can and does at all times by her command of the sea, secure to the Garrison of Gibraltar every supply which it wants.

6th It is observable that the Blockade of Gibraltar is rested by the proclamation on two considerations, one that it is necessary to prevent illicit traffic, by means of neutral vessels, between Spanish subjects and the Garrison there; the other that it is a just reprisal on Great Britain for the proceedings of her naval armaments against Cadiz and St. Lucar. The first can surely have no weight with neutrals, but on a supposition never to be allowed, that the resort to Gibraltar under actual circumstances, is an indulgence from Spain not a right of their own; the other consideration without examining the analogy between the cases referred to and that of Gibraltar, is equally without weight with the United States, against whom no right can accrue to Spain from its complaints against Great Britain; unless it could be shown that the United States were in an unlawful collusion with the latter, a charge which they well know that Spain is too just and candid to insinuate. It cannot even be said that the United States have acquiesced in the depredations committed by Great Britain under whatever pretexts on their lawful commerce. Had this indeed been the case, the acquiescence ought to be regarded as a sacrifice made by prudence to a love of peace, of which all nations furnish occasional examples, and as involving a question between the United States and Great Britain, of which no other nation could take advantage against the former. But it may be truly affirmed, that no such acquiescence has taken place. The United States have sought redress for injuries from Great Britain as well as from other nations. They have sought it by the means which ap-

peared to themselves, the only rightful judges, to be best suited to their object; and it is equally certain that, redress has in some measure been obtained, and that the pursuit of complete redress is by no means abandoned.

7th Were it admitted that the circumstances of Gibraltar in February 1800, the date of the Spanish proclamation, amounted to a real blockade, and that the proclamation was therefore obligatory on neutrals; and were it also admitted that the present circumstances of that place amount to a real blockade (neither of which can be admitted) still the conduct of the Algeciras cruziers is altogether illegal and unwarrantable. It is illegal and unwarrantable, because, the force of the proclamation must have expired whenever the blockade was actually raised, as must have been unquestionably the case, since the date of the proclamation, particularly and notoriously when the port of Algeciras itself was lately entered and attacked by a British fleet, and because on a renewal of the Blockade, either a new proclamation ought to have issued, or the vessels making for Gibraltar, ought to have been pre-monished of their danger and permitted to change their course as they might think proper. Among the abuses committed under pretext of War, none seem to have been carried to greater extravagance or to threaten greater mischief to neutral commerce, than the attempts to substitute fictitious blockades by proclamation, for real blockades formed according to the law of nations; and consequently none against which it is more necessary for neutral nations to remonstrate effectually before the innovations acquire maturity and authority, from repetitions on one side and silent acquiescence on the other.

In these observations, which it may be proper for you to make to the Spanish Government, in case justice should not have been yielded by it to the interpositions which will no doubt have been previously tried by Colº Humphreys or yourself, or by both. Letters from the former of the 21 and 29 of August shew that several cases of seizure had been made known to him, and that he had it in view to carry them before the

Spanish Government. Considering the amicable disposition manifested in general by that Government towards the United States, and the mutual interest it has in maintaining perfect harmony with them, the President indulges the strongest hopes that the earliest opportunity will have been seized for repairing the wrongs which have been committed, and for preventing a repetition of them. Should this hope prove falacious, it will be your duty to press these objects, by fair and frank representations, aided by the communications now made to you, and by an appeal to the express instructions from the President included in them; mingling always with your requisitions assurances of the cordial sentiments cherished by the United States towards Spain and their entire confidence in her disposition to evince that justice and respect for our rights which is not less congenial with her own high character than it is necessary for our satisfaction.

I have the honor to be, &c.

TO RUFUS KING. D. OF S. MSS. INSTR.

DEPARTMENT OF STATE,
December 22, 1801

SIR:

In my last of the 10th instant, I took occasion to remark to you the extensive injury threatened to our navigation by the countervailing Act of Great Britain, the inconsistency of that act, in our judgment, with the true sense of the Treaty of 1794, and the several remedies for the case, which occurred for consideration;—among which that of a revision of the British Act, and an adjustment of it to a more equitable rule, was suggested as an object proper to be sought by your immediate interposition with the British Government. The circumstances of haste and indisposition under which the latter was written rendered the development of the subject so incompetent that it cannot be too soon resumed.

I must repeat that the Treaty of 1794 in authorizing a countervailing duty on the part of Great Britain, can be

fairly understood to mean no more than that the navigation of the two countries might be put on as equal a footing as it would have remained on, if the regulation of Congress to be countervailed, had never passed. This position does not appear to be susceptible of denial or controversy. In order to re-establish such an equality, either of two courses would have been sufficient; first that of repealing the regulations of Congress charged with introducing an inequality in our favor; or secondly that of enacting in Great Britain regulations countervailing or balancing the inequality, and consequently having the like effect of re-establishing an equality. As the first course was not taken by the United States, and as that taken by Great Britain has produced a greater inequality in her favor than before existed against her, an important question now to be considered is, by what remodification, her countervailing act can be made to produce the just equality contemplated by the Treaty, in place of that transposed and augmented inequality resulting from the Act in its present form.

It seems clear that the British act in its present form has departed from the rule of justice and equality by making her own tariff instead of that of the United States the basis of an act for countervailing and equalizing a discrimination founded on the latter tariff. The deviation, though leaving a sufficient advantage to the British navigation, would be more striking if the Act had adhered to the rigour of the British tariff as the assumed construction of the Treaty would have authorized. The difference, for example, of one shilling and six pence sterling per hundred pounds of tobacco might have been raised as high as five shillings, amounting to twelve or fifteen dollars per Hogshead. Pig iron is another example: the difference of 6½ per ton might have been raised to more than 30 p Ct. of the value of the article. The British tariff in General being much greater than that of the United States one tenth of the former operating as a bounty in favour of British ships must proportionally exceed the operation of one tenth of the latter in favour of American ships.

Another observation to be made is, that the British act by imposing the countervailing burden on the productions of the United States, has made it impossible to regulate it according to any principle of sufficient uniformity and equality in relation to the ships of the two countries. How compare together things so different as the merchandize and manufactures of one country, with the heterogeneous productions of the other? In what mode is the value of the latter to be ascertained in British ports; as exactly as the value of the former is ascertained in the American ports? or if this difficulty should not be insurmountable, in the articles taxed according to their value; how, in what proportion, and by what classifications, are the American articles to be subjected to different rates in Great Britain, corresponding with the different rates of 7–½. 10 12–½ per Cwt 7c. assessed in the United States on the articles of Great Britain? or by what rule could an average of these rates, considering the inequality in value and bulk of the several classes of articles to which they are applied, be deduced, that would put the navigation of the two countries on that bona fide equality which the Treaty requires? or again, laying aside all the perplexities, how is it possible even to find a practicable rule of comparison and equalization for articles taxed not according to value; but according to quantity; and where the quantity may be defined in articles on one side by weight, and in articles on the other side by measure, and in some instances without any precise reference to either.

In addition to these considerations, it is of decisive importance that the tendency of a countervailing regulation applied to the productions of the United States imported into Great Britain is to favour the carriage of these in British bottoms; as the carriage of British manufactures in American bottoms, is favoured by the discriminating duty of the United States. Now as the productions of the United States, from their bulky character, employ at least ten times the tonnage which is required for the exports of Great Britain, and as it

is always to be kept in view that the object of the Treaty was not to encourage or discourage the productions or manufactures, or even the Commerce of both countries, but merely to give a fair equality and competition to the vessels navigating between them, it follows both that an undue advantage accrues to the British navigation, and that the object of the Treaty is proportionally violated by any discriminating burden on the productions of the United States, which will give to British bottoms a preference in the carriage of them. If a regulation of this sort could be just or within the meaning of the compact at all, it ought to be so contrived as to give a preference to the same number of British vessels in carrying the productions of the United States to Great Britain as there is of american vessels enjoying under our law a preference in bringing British merchandize to the United States; that is to say, on the supposition that our exports to Great Britain employ ten times as many vessels as her exports to this country, that her countervailing regulations ought to secure to her vessels the carriage of $\frac{1}{10}$ only of our productions, or in any point of view, such a proportion only as would leave to the vessels of the United States as much of the carriage of our productions as with their carriage of the manufactures of Great Britain, imported into this country, would divide equally between American and British vessels the joint amount of the carriage between the two countries. It is manifest however, that no regulation could be so skilfully shaped as to produce such a result. And it is equally certain that the regulation actually adopted by Great Britain must have the effect of monopolizing the transportation of the whole mass of our bulky articles, whilst the most that can be hoped by the United States will be a monopoly for their vessels of British articles not amounting to one tenth of that bulk. Nay, even this very unequal monopoly cannot be expected; because, of the many British vessels bound for our productions, it would often happen that some instead of coming in ballast would take a cargo without freight or with little freight, and

in that way increase the balance of their navigation against the American side of the account.

If these remarks be in any degree just, they must prove that with a view to a bona fide and practicable mode of imposing a countervailing duty Great Britain must withdraw it from the American productions which are so various in themselves and so dissimilar to her articles of merchandise as to admit of no rational comparison between them for the purpose in question, as well as renounce the use of a tariff so much exceeding that which is the basis of our discriminating duty, and must seek for a countervailing rule where alone it can be found, viz in the application of the same duty to the same objects which in the regulation of the United States produced the state of things which is to be countervailed. She must impose on her exports to this Country, in american bottoms the same discrimination of 10 p Cent as our law imposes on her exports to this Country in British bottoms. This will produce a real and precise countervailing effect, and this alone can produce one that will be real and precise.

To this expedient for redressing at once, the existing inequality in favour of British bottoms, and the inequality in favour of american bottoms complained of at the date of the Treaty, and provided against by that instrument it may be objected that the american tariff applied to British Articles in american ports, might not be applicable to the same articles on their leaving British ports. But it is probable that the adjustment of our tariff to the latter case would be made with as little difficulty and in fewer words than are now employed in the complicated regulations on this subject contained in the British Statute. It may also be objected that as american vessels bound with cargoes from Great Britain to the United States might clear out for other countries the additional duty of 10 p Cent might be eluded, and the British thereby deprived of the benefits of the Treaty. To this objection the answer is, that the abuse might be guarded against by requiring in Great Britain security from american vessels that they shall produce

a certificate of their having delivered their cargoes elsewhere than in the ports of the United States; or by an engagement on the part of the United States to require from their vessels bringing cargoes from Great Britain, a certificate of their having there paid the discriminating duty, or by both of these regulations. It may be further answered, that however imperfect or inconvenient these precautions may be, they are less objectionable than the palpable violation of equality existing under the present countervailing act. Lastly it may be said by the British administration that such a modification of the countervailing act would be the same thing with a repeal of all discrimination, and that the latter as the more simple and convenient remedy, ought to be preferred. Should this be said it will amount to an admission of the solidity of our objections to the present countervailing Act which works a very different effect, and will lead to the measure of repealing both that act and the Act of Congress—so far as they relate to the additional duty of 10 p Cent. If this measure can be immediately accomplished, it claims a preference, on the whole, over any other expedient, and if the British Government is disposed to come into it, an act of Parliament can readily be passed with a clause suspending its operation on a proclamation to be issued by the Executive authority on due notice of a correspondent repeal by Congress. And Congress if so disposed, can also immediately pass an act for the purpose with a like suspending clause. This might be the more expected as it is probable the difficulty, hinted in my last, as incident to a repeal of the discriminating duty here may be got over, and as such a proposition, which you will find in the newspaper, herewith sent, is now depending before the House of Representatives. In the meantime however, until these concurrent repeals shall be put into force, our navigation will continue to suffer, unless some alleviating regulation can be obtained from the equity and liberal policy of the British Government.

Were the constitution not a barrier to duties on exports, it

would not be very difficult for Congress to provide a remedy of themselves by repealing the present discrimination on imports, and imposing on our exports in British bottoms precisely the same duty, which her countervailing clauses adds on the importation of them in american bottoms, into Great Britain. Such measure could not be complained of by Great Britain, and the principle of it is exactly the same with that of the measure above contended for, as a necessary substitute for the present countervailing act of Great Britain; in case the better remedy of a repeal of the Acts on both sides, cannot be put into immediate train.

From the view here taken of the subject it seems advisable that you promote through the medium of proper representations and explanations to the British Government, a repeal of the countervailing part of the British statute, on the condition above stated, so far as respects the difference of 10 p Ct. With respect to the tonnage duty, which is made the same in its rates with that of ours, and which in case the 10 p Ct. duty be removed, is not likely to operate on more of our vessels than our tonnage duty will on British vessels, it may perhaps be well not to include that in the repeal, especially as it would have the effect of substracting that much from our revenue. A better course will be, if the British Parliament be pliant on the occasion for the repealing act to be so modified as to apply to one or both discriminations, as may concur with the Act of Congress which also if Congress should view the subject in the same light can be modified in a similar manner.

The temptation of Great Britain to detain our seamen in her service, having expired with the war, it is hoped there will be no difficulty in obtaining a general discharge of them, without the further trouble of proof, or particular enquiry. And you will perceive the propriety of hastening the measure, as much as possible for the sake of those who may be on board of ships allotted for distant stations or service. Whenever these unfortunate people may be discharged, justice will

require that their dues of every sort, be paid off, and their return to their own Country be provided for.

The Convention with France has received the sanction requested from the Senate, by the President, and the Proclamation of it has issued accordingly, you will find it in one of the inclosed newspapers.

With the highest respect & consideration, &c.

TO CHARLES PINCKNEY. D. OF S. MSS. INSTR.

DEPARTMENT OF STATE,
March 30th, 1802.

SIR:

My last was of the 5th of February, and 27th of March. I have as yet received no letter from you since your arrival at Madrid. By one from Col° Humphreys, written a few days after it took place, we learn that you were then confined by indisposition, and had not presented your credentials. We are anxious to hear from you on the several subjects with which you have been charged; particularly on that of Louisiana. By a Treaty entered into between Spain and France in March 1801, and lately published in the Paris newspapers, it appears that in an antecedent treaty, the cession of that Country had been stipulated by Spain. Still it is possible that the cession may have been since annulled; and that such was, or was to be the case, has been stated in verbal accounts from Madrid. At Paris, Mr. Livingston has been given to understand by the French Government, that the Cession had never been more than a subject of conversation between the two governments. No information however, has been received from him subsequent to the publication of the Treaty of March 1801, which must have led to some more decisive explanations.

The copies herewith inclosed, of a memorial of sundry inhabitants living on Waters running from the United States thro' Florida into the Gulph of Mexico, and of a letter from the late Mr Hunter representative in Congress of the Missis-

sippi Territory, will present to your attention a subject of some importance at this time, and of very great importance in a future view. The Treaty with Spain having as these documents observe, omitted to provide for the use of the Mobille, Catahoochee and other rivers running from our territory through that of Spain, by the citizens of the United States in like manner with the use of the Mississippi, it will be proper to make early efforts to supply the defect. Should a Cession, indeed, including the Spanish Territory Eastward of the Mississippi have finally taken place, it can answer no purpose to seek from the Spanish Government, this supplemental arrangement. On the contrary supposition, you will avail yourself of the most favourable moment and manner of calling its attention to the object. In support of our claim you will be able to use the arguments which inforced that to the navigation of the Mississippi. If it should be observed, that a greater proportion of these rivers, than of the Mississippi, run thro' the exclusive territory of Spain, it may be a set off, that the upper parts of the rivers run exclusively thro' the territory of the United States, and do not merely divide it, like the Mississippi from that of Spain. But neither the one nor the other circumstance can essentially affect our natural rights. Should the Spanish Government be favourably disposed, it will be proper for you to pave the way for a formal convention on the subject, endeavouring to obtain in the mean time, such regulations from its authority, and such instructions to its officers as will answer the purposes of our citizens. Among other hardships of which they now complain, and for which a regulation is particularly wanted, one I understand is, that the article cotton, which is acquiring rapid importance in that quarter, must, after it has been conveyed to Mobille, be shipped to New Orleans and pay a duty of about 12½ p Cent before it can be exported.

The copies of a letter from E. J. Berry and of another from E. Jones herewith also inclosed, present another subject which will claim your attention. This is not the only complaint that

has been received, of abuses relating to the effects of Americans deceased within the Spanish jurisdiction on the Mississippi. It seems so reasonable and necessary that the Consul residing there, or persons deriving authority from the deceased owner, should be allowed to take charge of such effects, that it is hoped a regulation for that purpose may be obtained from the justice and liberality of the Spanish Government. * * *

TO ROBERT R. LIVINGSTON.[1] D. OF S. MSS. INSTR.

WASHINGTON, DEPARTMENT OF STATE,
May 1st 1802.

SIR,

My last of which a duplicate is now sent, was of the twenty-sixth day of March. I have since received yours not then acknowledged including the Dispatch of Feby 26 which came to hand two days ago.

The conduct of the French Government in paying so little attention to its obligations under the Treaty, in neglecting its debts to our citizens, in giving no answers to your complaints and expostulations, which you say is the case with those of other foreign Ministers also, and particularly in its reserve as to Louisiana, which tactily contradicted the language first held to you by the Minister of Foreign Relations, gives tokens as little auspicious to the true interests of France herself, as to the Rights and the just objects of the United States. We have the better ground to complain of this conduct, as it is so much at variance with the example given by the Government here. The appropriation was no sooner carried thro' the Legislative forms, than the settlement of French claims under the Treaty commenced; and with the advantage of every facility that could be afforded on our part in ascertaining them; and as Mr Pichon was authorized to receive those due to individuals not applying, the whole amount has been already discharged, excepting in a very few cases which may require further examination. The claims were liquidated according

[1] Minister to France.

to the nett proceeds of the sales, as heretofore intimated to you, altho' it is still believed that restitution according to the gross amount or value at the time of capture, not only would be more favorable to the United States but more in itself. The payment to Mr Pichon without a special Power from the claimants was by no means the choice of the President, but was so much pressed, as a test of the disposition of this Country towards the French Republic at a critical moment, that it could not be properly refused. The sum received by him is $140,841.25 Cents. That paid to individuals is $74,667.41.

It is proper to observe to you that in all cases where sales were made by the American Captors prior to the date of the Convention, without the trial and condemnation requisite, we have admitted the title to restitution without regarding the lapse of time between the capture and the Convention, or making a question how far cases of that description were within the contemplation of the instrument. You will of course avail yourself of this proceeding on the part of the United States to enforce a correspondent rule in their favour, in case a different one should be contended for by the French Government. You will not fail to insist also, if occasion should require that in cases where the time allowed for appeals, had not run out at the date of the Convention, it could not be necessary for the claimants afterwards to enter appeals. The Convention by recognizing all claims not barred by final condemnation at its date, evidently rescued them from all further subjection to judicial investigation.

The Cession of Louisiana to France becomes daily more and more a source of painful apprehensions. Notwithstanding the Treaty of March 1801, and notwithstanding the general belief in France on the subject, and the accounts from St. Domingo that part of the armament sent to that island were eventually destined for Louisiana, a hope was still drawn from your early conversations with Mr. Talleyrand that the French Government did not mean to pursue the object. Since the receipt of your last communication, no hope remains but from

the accumulating difficulties of going thro' with the undertaking, and from the conviction you may be able to impress that it must have an instant and powerful effect in changing the relations between France and the United States. The change is obvious, and the more it can be developed in candid and friendly appeals to the reflections of the French Government, the more it will urge it to revise and abandon the project. A mere neighbourhood could not be friendly to the harmony which both countries have so much an interest in cherishing but if a possession of the mouth of the Mississippi is to be added to other causes of discord, the worst events are to be apprehended. You will consequently spare no efforts that will consist with prudence and dignity, to lead the Councils of France to proper views of this subject, and to an abandonment of her present purpose. You will also pursue by prudent means the enquiry into the extent of the Cession, particularly whether it includes the Floridas as well as New Orleans; and endeavour to ascertain the price at which these, if included in the Cession, would be yielded to the United States. I cannot in the present state of things be more particular on this head, than to observe that in every view it would be a most precious acquisition, and that as far as the terms could be satisfied by charging on the acquisition itself, the restitutions, and other debts to american Citizens, great liberality would doubtless be indulged by this Government. The President wishes you to devote every attention to this object, and to be frequent and particular in your communications relating to it.

According to the latest accounts from St Domingo the French troops had been considerably successful in dispersing the Blacks, but it is uncertain how long the War there may be protracted by the irregular enterprizes of the latter, and by the advantages they derive from the climate. You will have found from the Newspapers, that much irritation and perplexity were the consequence of all conduct on the part of the French Commander, on his arrival, met as we learn from

Mr Lear, by a conduct not less blameable on the part of the Americans trading there. To the other errors of General Le Clerc he has lately revoked the permission given to Mr Lear to exercise the functions of Commercial Agent, alleging for a reason that he had no authority for granting the permission, and had inconsiderately taken the step in the hurry of his arrival. He acknowledged at the same time, that he had been led to consider Mr. Lear as rendered justly obnoxious to him by throwing discredit on his Bills, and promoting irritations between the French and the Americans. In this view of Mr. Lears conduct Le Clerc must have been grossly misled by calumnies and intrigues, for the conduct of Mr. Lear has been in every respect highly meritorious, for the prudence, the moderation, the candor and conciliatory tone of it. Of this Le Clerc may be expected to be by degrees satisfied, as Mr. Pichon already is; and so far the evil may be mitigated; but with various other circumstances connected with the transactions at St Domingo, it has been unfavourable to the kind sensations which it has been our endeavour to cherish. You will remark also in the Newspapers that the idea of a visit from the French fleet, and of pecuniary succours from the Government of the United States, has excited not a little sensibility in some quarters of the Union. It was at one time the purpose of Admiral Vellaret to come to this Country with part of his fleet, and as it was feared that he would come without money or credit to obtain supplies for even the first wants, it was anticipated that applications would be made for a Loan in some form or other from the Government of the United States. The fleet however has not arrived and is understood not to be coming, and no application has in fact been made for pecuniary facilities, other than that of purchasing for purposes of the United States in Europe, bills drawn on the French Government; which application was rejected for reasons sufficiently obvious. It is now said that the Batavian part of the fleet is destined to the Chesepeake and will probably arrive in a few days.

Congress will probably adjourn on Monday. For an account of their proceedings and other domestic occurrences, I refer you to the printed papers herewith sent.

With sentiments of great respect &c. &c.

P. S. I have communicated to the President your wish to make a visit to England, and have the pleasure to inform you of his consent. He leaves the time and duration of your absence to your own judgment, assuring himself that both will be [in] due subordination to the important duties of your station.

TO CHARLES PINCKNEY D. OF S. MSS. INSTR.

DEPARTMENT OF STATE, May 11th, 1802.

SIR:

My last was of the 30th of March. We are still without a line from you since your arrival at Madrid, and feel an increasing solicitude to hear from you on the subject of Louisiana. The latest information from Paris has confirmed the fact that it was ceded by a Treaty prior to that of March 1801; and notwithstanding the virtual denial of the cession in the early conversations between Mr. Livingston and the Minister of Foreign relations, a refusal of any explanations at present, seems to admit that the cession has taken place. Still there are chances of obtaining a reversal of the transaction. The repugnance of the United States to it is and will be pressed in a manner that cannot be without some effect. It is known that most of the French statesmen best informed on the subject, disapprove of it. The pecuniary difficulty of the French Government must also be felt as a check; whilst the prospect of a protracted and expensive war in St. Domingo must form a very powerful obstacle to the execution of the project. The Counsels of England appear to have been torpid

on this occasion. Whether it proceed from an unwillingness to risk a fresh altercation with France, or from a hope that such a neighbourhood between France and the United States would lead to collisions which might be turned to her advantage, is more than I can decide. The latter consideration might justly have great weight with her, but as her eyes may be more readily turned to the immediate and certain purposes to be answered to her rival, it is to be presumed, that the policy of England will contribute to thwart the acquisition. What the intentions of Spain may be, we want to learn from you. Verbal information from inofficial sources has led us to infer that she disowns the instrument of Cession, and will vigourously oppose it. Should the Cession actually fail from this or any other cause, and Spain retain New Orleans and the Floridas, I repeat to you the wish of the President that every effort and address be employed to obtain the arrangement by which the Territory on the East side of the Mississippi including New Orleans may be ceded to the United States, and the Mississippi made a common boundary, with a common use of its navigation, for them and Spain. The inducements to be held out to Spain, were intimated in your original instructions on this point. I am charged by the President now to add, that you may not only receive and transmit a proposition of guaranty of her territory beyond the Mississippi, as a condition of her ceding to the United States the Territory including New Orleans on this side; but, in case it be necessary may make the proposition yourself, in the forms required by our Constitution. You will infer from this enlargement of your authority, how much importance is attached to the object in question, as securing a precious acquisition to the United States, as well as a natural and quiet boundary with Spain; and will derive from this consideration additional motives to discharge with a prudent zeal the task committed to you.

With sentiments of Great respect &c. &c.

TO ROBERT R. LIVINGSTON

D. OF S. MSS. INSTR.

DEPARTMENT OF STATE, July 6th, 1802

SIR,

I have lately been furnished by Captains Rogers and Davidson, with the respective narratives of the outrageous treatment which they suffered from the French administration at St. Domingo. These documents are now forwarded to you, and will enable you to press the subject on the French Government with the advantage to be derived from an accurate knowledge of its details. The insulting cruelties practised on these respectable citizens, and the absurd pretexts for them alleged by the General in Chief, have produced irritations and disgusts in this country which the French Government will not disregard, if it sincerely means, as we are willing to believe it does, to concur with the Government of the United States in consolidating the friendship between the two nations, by the exercise of reciprocal justice and respect. We trust that your claims of satisfaction in this case, will meet with the most candid and ready attention; and that besides the reparation of losses in property, which as they relate to Davidson, are stated at 1196 dollars, such animadversions will fall on the guilty as will heal as far as possible, the personal indignities offered to the American citizens.

The affinity subsisting between General Le Clerc, and the Chief Consul, has probably emboldened the former to overleap the barriers which his duty opposed to his power; and may be now much relied on by him as an asylum against the consequences due to his excesses. This supposition is strengthened by the resentment he has expressed at the interposition and expostulations of Mr. Pichon, with whom he will no longer communicate, and whose letters he has transmitted with a complaint to the French Government. A copy of this letter is herewith sent to you.

On another hand it would seem that he is anxious to exculpate himself in the eyes of his own government, or to divert its attention from his own misconduct, to causes of resentment

which he is imputing to the United States. With the first view an attempt was lately made at Cape Francois to engage the Americans there to sign a paper certifying that General Le Clerc had in no instance given just ground of dissatisfaction. Not a name I am told could be obtained.

To the other view viz, of diverting resentment from himself may be ascribed 1 the loud complaints with which he is said to dwell on the freedom of the American presses, in reproaching French transactions, and particularly his own, 2 his charge against this country of supplying or attempting to supply the party of Toussaint with the implements of War, 3 The suggestion of a covert acknowledgement of Toussaint's usurped authority, now observed in the form of the Commission given to the Commercial Agents of the United States, last sent to St. Domingo.

It will not be difficult to reply to these charges if they should shew themselves in your communications with the French Government. The presses and even the parliamentary debates in G. Britain, since the definitiv eTreaty of peace,use as unrestrained and offensive a language, as the Newspapers of the United States. It cannot be unknown that our presses are not under the regulation of the Government, which is itself constantly experiencing more or less of their abuse; and that besides the ordinary excesses to which all free presses are liable from the passions or indiscretions of citizens, those of the United States may for obvious reasons, be easily made the vehicle of insidious publications by persons among us who are not citizens, and who would gladly kindle animosities between France and the United States. It is a fact, that some of the most offensive accounts which have been printed, of the proceedings in St. Domingo, are now known to have been written from the spot, by British subjects, not by American citizens.

With respect to supplies of Military articles to the party of Toussaint, the answer is obvious, and must be satisfactory. Without admitting the fact that any such articles were at any

time so supplied, it may be observed, that the French Government can have no desire to recur to the past periods as of present dispositions; and that it is the duty and the intent of both countries not to remove the veil which the reconciliation so happily concluded, has thrown over preceding occurs rences. The conduct of the American administration since that event, can not be even suspected of the slightest irregularity or unfriendliness on this subject; nor as is believed, has a single instance happened since the arrival of the French armament, and the regulations by Genl. Le Clerc adapted to the revolt which ensued, in which an American citizen has engaged in commerce of any sort with Toissant or his adherents. The precautions taken by the French commanders were a sufficient bar to such an attempt; and had it been otherwise, it was explicitly declared to the French Minister here, and to Admiral Villaret, as you will have seen by communications already made to you, that our offending citizens would be considered by the President as fairly subjected to the penalties of their illegal conduct.

As to the complaint against the form of the Commissions given to Mr. Lear and the other Agents in St. Domingo, of which a copy is herewith included, it is proper to observe that when Mr. Lear presented his to Genl. Le Clerc, no objection or criticism was made. The first objection accompanied the order of departure given about the beginning of June to Mr. Caldwell the Commercial Agent at St. Domingo by the Officer commanding the Spanish part of the Island. From the language used on the occasion, which violated decorum not less than truth, and from other circumstances, it is inferred that the cavil was not made without the authority of Genl. Le Clerc, and consequently that it will enter into the complaints which he may find it convenient to present to his Government against that of the United States. On this subject observations of great force might be drawn from the very peculiar situation in which St. Domingo seemed to be left by the temporary and accommodating policy of the French Republic

itself, which finding it inconvenient to enforce its authority over the island or to furnish it with subsistence from its own sources, was anxious of course, that it might be fed from neutral sources, in other words from the U. States; and with every relaxation of ordinary forms necessary for so essential a purpose. But it is not necessary to resort to this consideration. The form of the Commission, which refers generally to the authority over the island without naming the French Republic is understood to have been copied from the usage of other countries, and has been long tho' not enviably practised by the Government of the United States. More than a dozen instances might be specified, one of which is as far back as the year 1702, and several as the year 1794, and for places such as Trieste, Hamburg, Bremen &c where there could be no other inducement to such a form, than the presumed regularity of it. In truth, it has from the commencement of the present administration been a principle with the President which has been as strictly observed as it has been sincerely declared, to avoid in the intercourse with St. Domingo every measure and circumstance which might controvert the authority of the French Republic; or give ground of umbrage to the French Government. On this principle particularly by every instruction given to the Commercial Agents sent to that Island.

With sentiments of great respect &c. &c. &c.

TO ROBERT R. LIVINGSTON.

D. OF S. MSS. INSTR.

DEPARTMENT OF STATE, October 15th, 1802.

SIR,

On my return from Virginia after an absence of two Months, I found here your letter of July 30th. Those of May 10, 12, 20, 28 June 8th & July 3d had been previously received.

The zeal and energy with which you are urging on the

French Government a fair construction and fulfilment of the Convention, and a discharge of all our just demands, render it unnecessary to repeat to you our anxiety that the example of good faith given by the United States should not remain without a satisfactory reciprocity. The precise tone in your communications most likely to favor this result, can best be decided by your own judgment.

In a general view, the sounded policy evidently prescribes one, that will cherish whatever good will or confidence may be felt towards the United States, and that will charge on that side the blame of any failure in the pursuit of our objects. It must be left to your own decision also how far a direct resort to the Head of the Government may promise [more] success than the ordinary channels of communicating with him. The delays and obstacles met with in the latter recommend the experiment, if there be no objections to it drawn from usage or other considerations not perceived at this distance. The experiment, which will of course be made with as little danger as possible of needless umbrage to the intermediate Organ, may at least lead to a knowledge of the ground finally meant to be taken by the Chief Consul; and to which the further instructions of the President must be accommodated.

The suspense which has taken place in relation to Louisiana and the Floridas, is favorable to the efforts for diverting the French Government from its unwise project. Whether we regard the sentiments prevailing in this Country on the subject, or the striking tendencies of the project itself, no pains ought to be spared for putting an end to it. If the occasion can be so improved as to obtain for the United States, on convenient terms, New Orleans and Florida, the happiest of issues will be given to one of the most perplexing of occurrences. I postpone more particular remarks on this subject, until the President shall know the impressions on the French Councils, resulting from the views of it to which you will be led by the dispatches of which Mr. Dupont was the bearer.

The answer to your note on the case of Capt. Rodgers and Davidson, is by no means such as there was a right to expect. Genl. Le Clerc having himself stated the reasons on which he proceeded, other and better reasons could not be presumed; and it seems impossible not to regard his reasons rather as an insult than a justification. My letter of July 6 will renew this subject: and it is to be hoped that a reconsideration by the French Government will do more justice to it.[1] * * *

TO CHARLES PINCKNEY. D. OF S. MSS. INSTR.

DEPARTMENT OF STATE, November 27th 1802.

SIR,

Your dispatches by Mr. Codman were delivered by him two days ago; but being voluminous, and the documents in the Spanish language, not yet fully translated, I am not able at present to convey to you the sentiments of the President on the subject. My letter of October 25th will have explained to you the scope of our claims on the Spanish Government; and I now only repeat the confidence entertained that as far as your success in the Convention has not corresponded there-

[1] On July 26 Madison wrote to Charles Pinckney:

The last information from Paris renders it certain that the Cession of Louisiana to France has actually been concluded, and that the Cession comprehends the two Floridas. In this state of the business it seems unnecessary to decide on the price which Spain might be led to expect for a cession of the Floridas including New Orleans to the United States; and the more so as it would be of use for us previously to know the value of the places on the guaranty proposed in my letter to you of 25th September last. For the cession wished by the United States, must be an object of negotiation with the French Government. It will notwithstanding continue to be proper for you to cultivate the good dispositions of Spain in relation to it, both as they may not be entirely disregarded by France, and as in the turn of events, Spain may possibly be extricated from her engagements to France, and again have the disposal of the Territories in question.

D. of S. MSS. Instr.

with, your efforts will be renewed to bring about a supplemental provision; particularly in behalf of our citizens whose losses proceeded from aliens within Spanish responsibility.

A letter from a confidential citizen at New Orleans, of which a copy is inclosed, has just informed us, that the Intendant at that place, by a proclamation from which an extract is also inclosed, had prohibited the deposit of american effects, stipulated by the Treaty of 1795; and as the letter is interpreted, that the river was also shut against the external commerce of the U. States from that port. Whether it be the fact or not that this latter prohibition has also taken place, it is evident that the useful navigation of the Mississippi so essentially depends on a suitable depositary for the articles of commerce that a privation of the latter is equivalent to a privation of both.

This proceeding is so direct and palpable a violation of the Treaty of 1795, that in candor it is to be imputed rather to the Intendent solely, than to instructions of his Government. The Spanish Minister takes pains to impress this belief, and it is favoured by private accounts from New Orleans mentioning that the Governor did not concur with the Intendant. But from whatever source the measure may have proceeded the President expects that the Spanish Government will neither lose a moment in countermanding it, nor hesitate to repair every damage which may result from it. You are aware of the sensibility of our Western citizens to such an occurrence. This sensibility is justified by the interest they have at stake. The Mississippi is to them everything. It is the Hudson the Delaware, the Potomac and all the navigable rivers of the atlantic States formed into one stream. The produce exported thro' that channel last year amounted to $1,622,672 from the District of Kentucky and Mississippi only, and will probably be fifty p Cent more this year (from the whole Western Country, Kentucky alone has exported for the 1st half of this year $591,432 in value) a great part of which is now or shortly will be afloat for New Orleans and

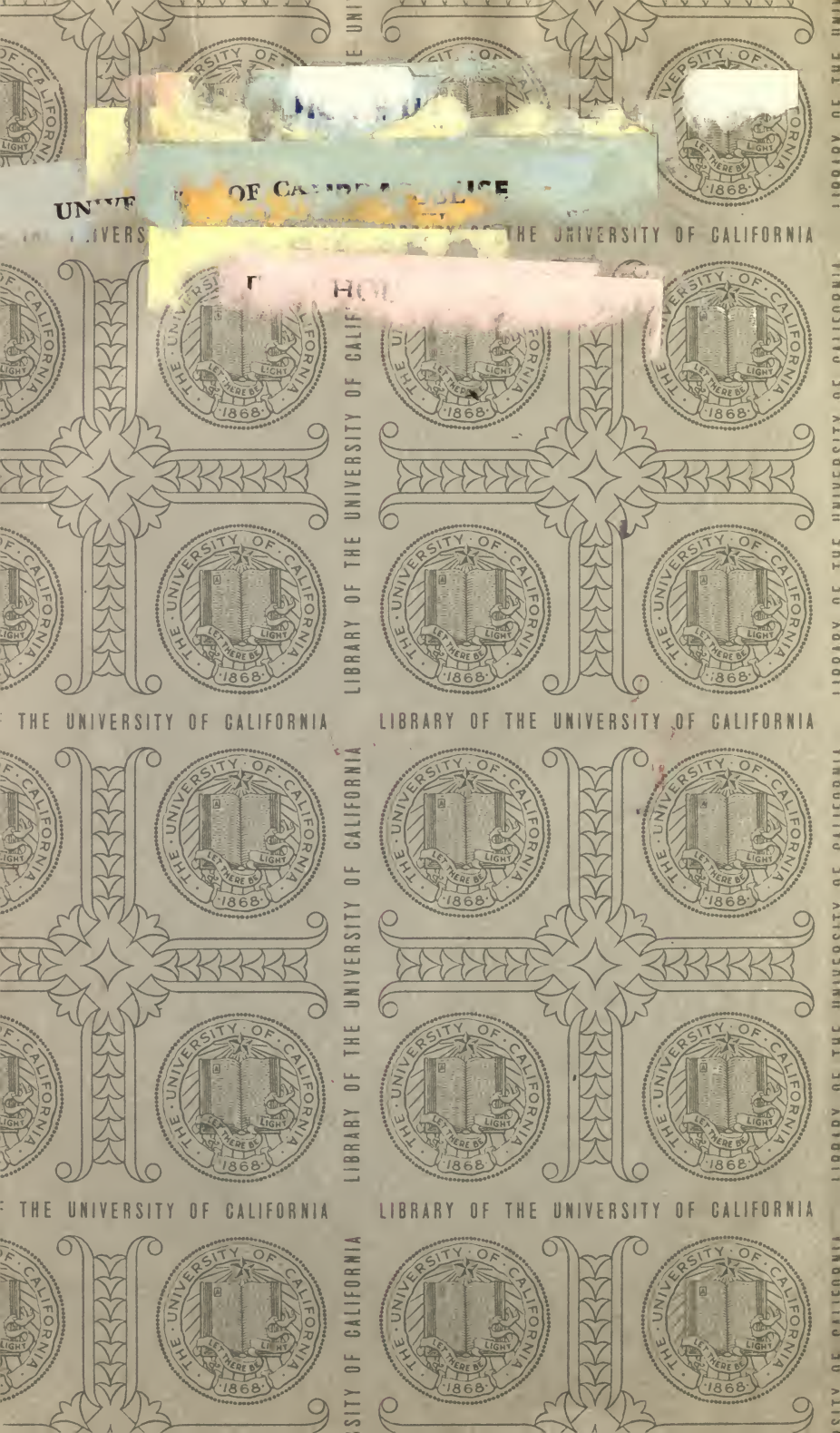
consequently exposed to the effects of this extraordinary exercise of power. Whilst you presume therefore in your representations to the Spanish Government, that the conduct of its officers is no less contrary to its intentions, than it is to its good faith, you will take care to express the strongest confidence, that the breach of the Treaty will be repaired in every way which justice and a regard for a friendly neighbourhood may require.

I have communicated the information received from New Orleans to the Chevalier D'Yrujo, with a view to obtain his immediate interposition as you will find by the inclosed copy of a letter to him. He readily undertakes to use it with all the effect he can give it, by writing immediately on the subject to the local authority at New Orleans. I shall write at the same time to Mr. Hulings, who will enforce as far as he may have an opportunity the motives for recalling the unwarrantable prohibitions. It is to be hoped that the Intendant will be led to see the error which he has committed, and to correct it, before a very great share of its mischief will have happened. Should he prove as obstinate as he has been ignorant or wicked, nothing can temper the irritation and indignation of the Western Country, but a persuasion that the energy of their own Government will obtain from the justice of that of Spain, the most ample redress.

It has long been manifest, that whilst the injuries to the United States, so frequently occurring from the Colonial offices scattered over our hemisphere and in our neighbourhood, can only be repaired by a resort to the respective sovereigns in Europe, that it will be impossible to guard against the most serious inconveniences. The instance before us strikes with peculiar force, and presents an occasion on which you may advantageously suggest to the Spanish Government, the expediency of placing in their Minister on the Spot an authority to controul or correct the mischievous proceedings in their Colonial officers towards our citizens; without which any of fifteen or twenty individuals, not always

among either the wisest or best of men, may at any time threaten the good understanding of the two Countries. The distance between the United States and the old Continent, and the mortifying delays of explanations across the Atlantic, on emergencies in our neighbourhood, render such a provision indispensable, and it cannot be long before all the Governments of Europe having American Colonies must see the policy of making it.

I am, &c. &c. &c.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